

Exhibit A
to
Google LLC's Notice of Filing

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GARY FEITELSON, a Kentucky resident, and DANIEL MCKEE, an Iowa resident, on behalf of themselves and all others similarly situated,

Plaintiffs.

V.

GOOGLE INC., a Delaware corporation,

Defendants.

Case No. 5:14-cv-02007-BLF

GOOGLE LLC'S ADMINISTRATIVE MOTION TO CONSIDER WHETHER CASES SHOULD BE RELATED

Pursuant to Civil L.R. 3-12(b), Google LLC (“Google”), requests that this Court consider whether, under Civil L.R. 3-12(a), the following cases should be related to the above-captioned case (“*Feitelson-Google*”):

1. ***Epic Games, Inc. v. Google LLC et al.***, No. 20-cv-05671-JD (“*Epic-Google*”), filed on August 13, 2020, which is currently pending before Judge Donato. *See* Declaration of Brian C. Rocca (“Rocca Decl.”), Ex. A, *Epic-Google* Compl. Defendants Google and Google Payment Corp. were served on September 4, 2020.¹
2. ***Carr v. Google LLC et al.***, No. 20-cv-05761-BLF (“*Carr-Google*”), filed on August 15, 2020, which is currently pending before this Court. *See* Rocca Decl., Ex. B, *Carr-Google* Compl. As of the date of this filing, it appears that Google LLC is the only defendant served with the complaint (on September 8, 2020).
3. ***Pure Sweat Basketball, Inc. v. Google LLC et al.***, No. 20-cv-05792-JD (“*PSB-Google*”), filed on August 17, 2020, which was pending before Judge Chen, but related to *Epic-Google* on September 9, 2020 and is now before Judge Donato. Rocca Decl., Ex. C, *PSB-Google* Compl. Defendants Google and Google Payment Corp. were served on August 21, 2020. As of the date of this filing, the non-U.S. Google defendants do not appear to have been served.

Solely for convenience and purposes of this Response, Google refers to these actions as “the Android/Google Cases.” Google believes the Android/Google Cases now before Judge Donato (*Epic-Google* and *PSB-Google*) and Judge Freeman (*Carr-Google*) all “relate” to each other under Civil L.R. 3-12(a). Each case challenges the open Android ecosystem and Google’s agreements and policies with respect to Google’s app store, Google Play. Specifically, these cases allege that Google, *inter alia*, entered into Mobile App Distribution Agreements (“MADAs”) with OEMs, which purportedly foreclose or disadvantage competing apps on Android mobile devices. In response, Google will vigorously defend the openness of Android, in part because the challenged agreements do not foreclose competition. Android devices: (1) can have multiple competing app stores simultaneously pre-installed or downloaded; and (2) permit users to “sideload,” *i.e.*, to directly download apps from the internet.

¹ The non-U.S. Google defendants appear to have been served as of September 7, 2020—Google Ireland Limited (service on September 6, 2020), Google Commerce Limited (service on September 7, 2020), and Google Asia Pacific Pte. Limited (service on September 4, 2020). Counsel for defendants is confirming that service was proper.

As discussed further below, *Feitelson-Google*, which was brought by the same law firm that represents plaintiffs in *PSB-Google*, also included overlapping agreements and an overlapping theory of alleged anticompetitive foreclosure. The *PSB-Google* complaint even cites to the *Feitelson-Google* complaint when referencing relevant MADAs. See *PSB-Google*, Compl., ¶ 69 n.75. *Feitelson-Google* was dismissed on the pleadings in 2015. See *Feitelson v. Google, Inc.*, 80 F. Supp. 3d 1019 (N.D. Cal. 2015) (granting motion to dismiss).

On August 31, 2020, Judge Chen issued a Sua Sponte Judicial Referral for Purposes of Determining Relationship of Cases referring *PSB-Google* to Judge Donato and Judge Gonzalez Rogers to determine whether it is related to *Epic-Google*; *Cameron et al v. Apple Inc.*, No. 4:19-cv-03074-YGR (“*Cameron-Apple*”); or *Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR (“*Epic-Apple*”). Google filed a response to Judge Chen’s order in *Cameron-Apple* on September 3, 2020 (Rocca Decl., Ex. D) and in *Epic-Google* on September 4, 2020 (Rocca Decl., Ex. E), raising in both the possible relation of the Android/Google Cases to *Feitelson-Google*.²

DISCUSSION

An action is related to another when (1) the actions concern substantially the same parties, property, transaction, or event; and (2) it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges. Civ. L.R. 3-12(a). When a party believes an action “may be” related to another action that “is or was pending in this District” it is required to file an administrative motion to consider whether cases should be related. Civ. L.R. 3-12(b) (emphasis added).

I. The Android/Google Cases May Be Related To Feitelson-Google

While the three Android/Google Cases are related to each other, Google believes they may also be related to *Feitelson-Google*, a case that “was pending” in this District.³ See Civ. L.R.

² Judge Donato ordered relation of Epic-Google and PSB-Google on September 9, 2020.

³ Additionally, each of the plaintiffs in the recently-filed Android/Google Cases—Epic, Mary Carr, and Pure Sweat Basketball—agreed to litigate disputes with Google “exclusively” in Santa Clara County, i.e., in the San Jose Division for federal court cases. See Google DDA, §16.8, available at <https://play.google.com/about/developer-distribution-agreement.html>; Google Terms of Service, Section “Settling disputes, governing law, and courts”, available at

1 3-12(b). Each of these four cases allege claims against Google based on overlapping
 2 transactions—Google’s contracts with OEMs and its policies within the Android ecosystem
 3 regarding the preloading and placement of Google apps on Android devices. The chart below
 4 summarizes *Feitelson-Google* and each of the three Android/Google Cases in order of their filing.

5 Case, No. (Judge)	6 Plaintiff / Type	7 Defendants	8 Property, Transaction or Event
9 <i>Feitelson et al. v. Google Inc.</i> , No. 5:14-cv-02007 (Freeman, J.)	10 Gary Feitelson and Daniel McKee / Putative consumer class	11 Google Inc.* *Converted to Google LLC in 2017	12 Android OS Google Search Google’s MADA Google Play Store
13 <i>Epic Games, Inc. v. Google LLC et al.</i> , No. 3:20-cv-05671 (Donato, J.)	14 Epic Games / Individual app developer	15 Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	16 Android OS Google’s MADA Google Play Store Google’s Developer Distribution Agreements (“DDA”)
17 <i>Carr v. Google LLC et al.</i> , No. 5:20-cv-05761 (Freeman, J.)	18 Mary Carr / Putative consumer class	19 Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	20 Android OS Google’s MADA Google Play Store Google’s DDA
21 <i>Pure Sweat Basketball, Inc. v. Google LLC et al.</i> , No. 3:20-cv-05792 (Donato, J.)	22 Pure Sweat Basketball / Putative app developer class	23 Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	24 Android OS Google’s MADA Google Play Store Google’s DDA

25 The complaints in *Feitelson-Google* and the Android/Google Cases have an overlapping
 26 theory of anticompetitive harm: Google’s use of MADAs to purportedly foreclose competition in
 27 the markets alleged in each complaint (“general search” and “handheld general search” in
 28 *Feitelson* and the “Android app distribution market” in the Android/Google Cases).⁴ *Feitelson-*

24
<https://policies.google.com/terms?hl=en-US>. *Carr-Google* (currently assigned to this Court) is
 the only Android/Google Case assigned to a court in the San Jose Division.

25
 4 The Android/Google Cases also allege that Google uses its monopoly power in the alleged
 26 “Android app distribution market”—purportedly gained through the MADAs and other allegedly
 27 anticompetitive agreements with OEMs—to tie “in-app payment processing” to distribution
 28 through Google Play. Rocca Decl., Ex. A, *Epic-Google Compl.*, ¶¶ 177-178; Rocca Decl., Ex. B,
Carr-Google Compl., ¶¶ 146, 154, 158-159, 164; and Rocca Decl., Ex. C, *PSB-Google Compl.*,
 ¶¶ 156, 208-209.

1 Google Dkt. No. 31, Amended Complaint (“FAC”), ¶ 10; Rocca Decl., Ex. A, *Epic-Google*
 2 Compl., ¶¶ 145, 188; Rocca Decl., Ex. B, *Carr-Google* Compl., ¶¶ 126, 169; and Rocca Decl.,
 3 Ex. C, *PSB-Google* Compl., ¶ 73.

4 For example, the complaints all allege that under Google’s MADA, OEMs can only
 5 preload “must-have” Google apps if the OEM agrees to preload a bundle of Google apps
 6 (including Google Play), which allegedly forecloses competitive apps. *Compare*:

- 7 ● *Feitelson-Google* FAC, ¶ 7 (alleging Google forecloses competition “by way of secret
 8 contracts called [MADAs],” which “allow[] Android . . . manufacturers to pre-load a
 9 suite of Google apps including . . . Google Play client . . . but *only* if the manufacturer
 10 pre-loads onto prime screen real estate *all* of the apps in the suite....”); *see also id.* ¶¶
 11 36, 97, 125, 131.
- 12 ● *Epic-Google* Compl. ¶ 15 (alleging “Google bundles the Google Play Store with a set
 13 of other Google services that Android OEMs must have on their devices...effectively
 14 foreclose[ing] competing app stores—and even single apps—from what could be a
 15 primary distribution channel.”); *see also id.* ¶¶ 82-87.
- 16 ● *Carr-Google* Compl., ¶ 5 (same as *Epic-Google*, above); *see also id.* ¶ 61.
- 17 ● *PSB-Google* Compl., ¶ 65 (alleging that OEM licenses require bundling of Google
 18 Apps, including Google Play, which “unfairly shut[s] competing app stores] out of the
 19 market”); *see also id.* ¶¶ 7, 73.

20 Additionally, all plaintiffs allege that placement requirements for Google apps make it
 21 unlikely that competitor apps will be used. *Compare*:

- 22 ● *Feitelson-Google* FAC, ¶¶ 36 and 40 (alleging that an OEM “must agree to pre-load
 23 *all* of a suite of Google applications onto prime screen real estate,” and when apps are
 24 “placed prominently on a handheld device . . . Google knows that phone and tablet
 25 owners will use it”), *see also id.* ¶¶ 7, 41-42; *Feitelson*, 80 F. Supp. 3d at 1023
 26 (“Among other terms in the representative MADAs, an OEM that wishes to pre-load
 27 apps like YouTube and the Play client on an Android OS phone must also . . . pre-load
 28 *all* of a suite of and must give those apps ‘prime screen real estate.’”)
- 29 ● *Epic-Google* Compl., ¶ 82 (alleging that MADAs condition “OEMs’ licensing of the
 30 Google Play Store . . . on OEMs’ agreements to provide the Google Play Store with
 31 preferential treatment compared to any other competing app store,” which “place[s]
 32 any other app store at a significant disadvantage”), *see also id.* ¶ 83
- 33 ● *Carr-Google* Compl., ¶ 61 (alleging “the MADA requires OEMs to locate the Google
 34 Play Store on the ‘home screen’ of each mobile device . . . occupying valuable space”
 35 that places competing app stores “at a significant disadvantage”), *see also id.* ¶ 62;

1 • *PSB-Google* Compl. ¶ 69 n.75 (identifying terms of MADA that require “prime
2 placement of Google Applications”).

3 The complaints also claim that Google’s OEM agreements stifle innovation and choice by
4 allegedly preventing the preloading of competing apps onto Android devices. *Compare*:

5 • *Feitelson-Google* FAC, ¶ 70 (alleging that the mandatory MADA terms “kill
6 competition and consumer choice”), *see also id.* ¶¶ 71, 82.

7 • *Epic-Google* Compl., ¶¶ 107-109, 111 (identifying alleged harm to OEMs’ ability to
8 innovate and compete by offering more appealing distribution platforms, harm to app-
9 distributors’ ability to innovate new models of app distribution, and harm to
10 consumers’ ability to discover apps through additional or more tailored platforms).

11 • *Carr-Google*, Compl., ¶¶ 81-83, 85 (same as *Epic-Google*, above).

12 • *PSB-Google* Compl., ¶¶ 103-105 (same).

13 To be clear, Google rejects these copycat allegations and believes they cannot be
14 reconciled with Android’s fundamental openness and well-established principles of antitrust law.
15 But the overlap in these four cases is clear. They each involve the same defendant, the same open
16 ecosystem (Android), the same app store (Google Play), and overlapping agreements (MADAs)
17 and theories of anticompetitive harm. There would be an unduly burdensome duplication of labor
18 and expense and conflicting results if the three Android/Google Cases were conducted before
19 different judges. Because this Court—already the assigned Judge in *Carr-Google*—also decided
20 *Feitelson-Google*, there may be efficiencies in relating all four actions before this Court. And, as
21 noted above (*see n.3*), this is the only Court presently assigned to any of these matters who
22 presides in the parties’ agreed-to “exclusive” venue, Santa Clara County.

23 Google defers to the Court’s determination as to whether the Android/Google Cases
24 (*Epic-Google*, *Carr-Google* and *PSB-Google*) are related to *Feitelson-Google* under Civil Local
Rule 3-12(a).

25 Dated: September 9, 2020

By _____ /s/ Brian C. Rocca

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26
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28

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11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

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14

GARY FEITELSON, a Kentucky resident, and

DANIEL MCKEE, an Iowa resident, on behalf

of themselves and all others similarly situated,

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Plaintiffs,

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v.

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GOOGLE INC., a Delaware corporation,

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Defendants.

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Case No. 5:14-cv-02007-BLF

**DECLARATION OF BRIAN C.
ROCCA IN SUPPORT OF GOOGLE
LLC'S ADMINISTRATIVE MOTION
TO CONSIDER WHETHER CASES
SHOULD BE RELATED**

1 I, Brian C. Rocca, state and declare as follows:

2 1. I am an attorney admitted to practice law in California and before this Court. I am
 3 a partner in the law firm of Morgan, Lewis & Bockius LLP, and was counsel for Defendant
 4 Google Inc. in the above-captioned action. I am also counsel for Google LLC (“Google”) in three
 5 recently-filed actions: (1) *Epic Games, Inc. v. Google LLC et al.*, No. 20-cv-05671-JD (“*Epic-*
 6 *Google*”), currently pending before Judge Donato; (2) *Carr v. Google LLC et al.*, No. 20-cv-
 7 05761-BLF (“*Carr-Google*”), currently pending before this Court; and (3) *Pure Sweat Basketball,*
 8 *Inc. v. Google LLC et al.*, No. 20-cv-05792-JD (“*PSB-Google*”), which was originally pending
 9 before Judge Chen, but was related to *Epic-Google* on September 9, 2020 and is now before
 10 Judge Donato. For ease of reference, I refer to these three recently-filed actions in this
 11 Declaration as the “Android/Google Cases.” The following facts are within my personal
 12 knowledge and, if called and sworn as witness, I could and would testify competently to them.

13 2. The above-captioned matter, *Feitelson et al. v. Google Inc. (Feitelson-Google)*,
 14 was filed in this District on May 1, 2014 by the law firm of Hagens Berman Sobol Shapiro LLP.
 15 ECF No. 1. Plaintiffs filed a First Amended Complaint on August 1, 2014. ECF 31. This Court
 16 granted a motion to dismiss the First Amended Complaint on February 20, 2015, providing
 17 plaintiffs with an opportunity to file a further amended complaint. ECF No. 52. Plaintiffs
 18 declined to amend and voluntarily dismissed the action on April 3, 2015. ECF No. 55.

19 3. *Epic-Google*, *Carr-Google*, and *PSB-Google* were filed in this District on August
 20 13, 2020, August 15, 2020, and August 17, 2020, respectively, naming the same five Google
 21 defendants in each complaint: Google LLC; Google Ireland Limited; Google Commerce
 22 Limited; Google Asia Pacific Pte. Limited; and Google Payment Corp.

23 4. Attached hereto as **Exhibit A** is a true and correct copy of the complaint filed in
 24 *Epic-Google*. As of the date of this filing, it appears that all five Google defendants have been
 25 served in *Epic-Google*.

26 5. Attached hereto as **Exhibit B** is a true and correct copy of the complaint filed in
 27 *Carr-Google*. As of the date of this filing, it appears that Google LLC is the only defendant
 28 served in *Carr-Google* (on September 8, 2020).

1 6. Attached hereto as **Exhibit C** is a true and correct copy of the complaint filed in
 2 *PSB-Google* by Hagens Berman Sobol Shapiro LLP, the same counsel that filed the *Feitelson-*
 3 *Google* complaint. As of the date of this filing, it appears that Google LLC and Google Payment
 4 Corp. are the only two defendants served in *PSB-Google* (on August 21, 2020).

5 7. On August 31, 2020, Judge Chen, presiding over *PSB-Google*, issued a Sua Sponte
 6 Judicial Referral for Purposes of Determining Relationship of Cases (“Sua Sponte Referral”) to
 7 determine whether *PSB-Google* is related to *Epic-Google*; *Cameron et al. v. Apple Inc.*, No. 19-
 8 cv-03074-YGR (“*Cameron-Apple*”); or *Epic Games, Inc. v. Apple Inc.*, No. 20-cv-05640-YGR
 9 (“*Epic-Apple*”). Google filed a response in *Cameron-Apple* on September 3, 2020 at ECF No.
 10 115 (a true and correct copy attached hereto as **Exhibit D**); and in *Epic-Google* on September 4,
 11 2020 at ECF No. 32 (a true and correct copy attached hereto as **Exhibit E**). In its responses,
 12 Google raised the potential relation of the Android/Google Cases to *Feitelson-Google*.

13 8. On September 4, 2020, I spoke with counsel for plaintiff in *PSB-Google* regarding
 14 the issue of relation under Civil Local Rule 12(a) and (b). Counsel for plaintiff indicated he
 15 intended to file a response to Judge Chen’s Sua Sponte Referral, which he did later that day. *See*
 16 *Epic-Google* at ECF No. 33; *Cameron-Apple* at ECF No. 116. PSB’s position was that *PSB-*
 17 *Google* should be related to certain cases involving Apple pending before Judge Gonzalez-
 18 Rogers—namely, *Cameron, et al. v. Apple Inc.*, N.D. Cal. No. 19-cv-03074-YGR and *Epic*
 19 *Games, Inc. v. Apple Inc.*, N.D. Cal. No. 20-cv-05640-YGR.

20 9. On September 8, 2020, I sent counsel for plaintiff in the *Epic-Google* matter an
 21 email informing them that *Feitelson-Google*, *Epic-Google*, *Carr-Google*, and *PSB-Google* may
 22 potentially be related under Civil Local Rule 3-12(a) and (b). I asked counsel whether Epic
 23 would stipulate to the relation of these cases. Counsel responded on September 9, 2020 that Epic
 24 does not oppose the relation of *Epic-Google* to *Carr-Google* and *PSB-Google*—however, Epic
 25 does not consent to having *Epic-Google* related to *Feitelson-Google*.

26 10. On September 8, 2020, plaintiff in the *Carr-Google* matter filed a Response to
 27 Judge Chen’s Sua Sponte Referral indicating that *Carr-Google* is related to *Epic-Google*, but
 28 disagreeing that those cases are related to *Feitelson-Google*. *See Epic-Google*, ECF No. 34.

11. On September 9, 2020, Judge Donato issued an order relating *Epic-Google* and *PSB-Google*.

12. Based on the filings of the various parties, as well as related meet and confers, it is clear that this issue cannot be resolved by stipulation. Under Civil L.R. 3-12(b), whenever a party believes that the action may be related to an action which is or was pending in this District, the party must promptly file in the lowest-numbered case an Administrative Motion. Toward that end, Google LLC is filing an administrative motion so the Court may consider whether the Android/Google Cases are related to *Feitelson-Google*, and I am providing this supporting declaration as required by Local Rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this declaration on September 9, 2020.

By: /s/ Brian C. Rocca
Brian C. Rocca

EXHIBIT A

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

EPIC GAMES, INC., a Maryland
Corporation,

Plaintiff,

Case No.

V.

GOOGLE LLC; GOOGLE IRELAND LIMITED; GOOGLE COMMERCE LIMITED; GOOGLE ASIA PACIFIC PTE. LIMITED; and GOOGLE PAYMENT CORP..

COMPLAINT FOR INJUNCTIVE RELIEF

Defendants

28

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1 Plaintiff Epic Games, Inc. (“Epic”), by its undersigned counsel, alleges,
 2 with knowledge with respect to its own acts and on information and belief as to other
 3 matters, as follows:

4 **PRELIMINARY STATEMENT**

5 1. In 1998, Google was founded as an exciting young company with a
 6 unique motto: “Don’t Be Evil”. Google’s Code of Conduct explained that this
 7 admonishment was about “how we serve our users” and “much more than that . . . it’s
 8 also about doing the right thing more generally”.¹ Twenty-two years later, Google has
 9 relegated its motto to nearly an afterthought, and is using its size to do evil upon
 10 competitors, innovators, customers, and users in a slew of markets it has grown to
 11 monopolize. This case is about doing the right thing in one important area, the Android
 12 mobile ecosystem, where Google unlawfully maintains monopolies in multiple related
 13 markets, denying consumers the freedom to enjoy their mobile devices—freedom that
 14 Google always promised Android users would have.

15 2. Google acquired the Android mobile operating system more than a
 16 decade ago, promising repeatedly over time that Android would be the basis for an
 17 “open” ecosystem in which industry participants could freely innovate and compete
 18 without unnecessary restrictions.² Google’s CEO, Sundar Pichai, represented in 2014
 19
 20
 21

22 ¹ Kate Conger, *Google Removes ‘Don’t Be Evil’ Clause from Its Code of Conduct*, Gizmodo
 23 (May 18, 2018), <https://gizmodo.com/google-removes-nearly-all-mentions-of-dont-be-evil-from-1826153393>.

24 ² Google Blog, News and notes from Android team, *The Benefits & Importance of Compatibility*,
 25 (Sept. 14, 2012), <https://android.googleblog.com/2012/09/the-benefits-importance-of-compatibility.html> (“We built Android to be an open source mobile platform freely available to anyone
 26 wishing to use it This openness allows device manufacturers to customize Android and enable
 new user experiences, driving innovation and consumer choice.”); Stuart Dredge, *Google’s Sundar
 Pichai on wearable tech: ‘We’re just scratching the surface’*, The Guardian (Mar. 9, 2014),
<https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw>
 27 (“Android is one of the most open systems that I’ve ever seen”); Andy Rubin, *Andy Rubin’s Email to
 28 Android Partners*, The Wall Street Journal (Mar. 13, 2013), *available at* <https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog> (“At
 its core, Android has always been about openness”).

1 that Android “is one of the most open systems that I’ve ever seen”.³ And Andy Rubin,
 2 an Android founder who is described by some as the “Father of Android”, said when he
 3 departed Google in 2013 that “at its core, Android has always been about openness”.⁴
 4 Since then, Google has deliberately and systematically closed the Android ecosystem to
 5 competition, breaking the promises it made. Google’s anti-competitive conduct has
 6 now been condemned by regulators the world over.

7 3. Epic brings claims under Sections 1 and 2 of the Sherman Act and
 8 under California law to end Google’s unlawful monopolization and anti-competitive
 9 restraints in two separate markets: (1) the market for the distribution of mobile apps to
 10 Android users and (2) the market for processing payments for digital content within
 11 Android mobile apps. Epic seeks to end Google’s unfair, monopolistic and anti-
 12 competitive actions in each of these markets, which harm device makers, app
 13 developers, app distributors, payment processors, and consumers.

14 4. **Epic does not seek monetary compensation from this Court for**
 15 **the injuries it has suffered.** Epic likewise does not seek a side deal or favorable
 16 treatment from Google for itself. Instead, Epic seeks injunctive relief that would deliver
 17 Google’s broken promise: an open, competitive Android ecosystem for all users and
 18 industry participants. Such injunctive relief is sorely needed.

19 5. Google has eliminated competition in the distribution of Android
 20 apps using myriad contractual and technical barriers. Google’s actions force app
 21 developers and consumers into Google’s own monopolized “app store”—the Google
 22 Play Store. Google has thus installed itself as an unavoidable middleman for app
 23 developers who wish to reach Android users and vice versa. Google uses this monopoly
 24 power to impose a tax that siphons monopoly profits for itself every time an app
 25

26 ³ Stuart Dredge, *Google’s Sundar Pichai on wearable tech: ‘We’re just scratching the surface’*, The
 27 Guardian (Mar. 9, 2014), <https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw>.

28 ⁴ Andy Rubin, *Andy Rubin’s Email to Android Partners*, The Wall Street Journal (Mar. 13, 2013),
 available at <https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog>.

developer transacts with a consumer for the sale of an app or in-app digital content. And Google further siphons off all user data exchanged in such transactions, to benefit its own app designs and advertising business.

6. If not for Google’s anti-competitive behavior, the Android ecosystem could live up to Google’s promise of open competition, providing Android users and developers with competing app stores that offer more innovation, significantly lower prices and a choice of payment processors. Such an open system is not hard to imagine. Two decades ago, through the actions of courts and regulators, Microsoft was forced to open up the Windows for PC ecosystem. As a result, PC users have multiple options for downloading software unto their computers, either directly from developers’ websites or from several competing stores. No single entity controls the ecosystem or imposes a tax on all transactions. And Google, as the developer of software such as the Chrome browser, is a direct beneficiary of this competitive landscape. Android users and developers likewise deserve free and fair competition.

* * *

7. In today's world, virtually all consumers and businesses stay connected, informed, and entertained through smart mobile computing devices such as smartphones and tablets. Mobile applications ("apps") are innovative software products that greatly contribute to those devices' value. Consumers the world over use smart mobile devices and mobile apps to video chat with friends, pay bills, stay current with the news, listen to music, watch videos, play games, and more.

8. Epic develops and distributes entertainment apps for personal computers, gaming consoles, and smart mobile devices. The most popular game Epic currently makes is *Fortnite*, which has connected hundreds of millions of people in a colorful virtual world where they meet, play, talk, compete, dance, and even attend concerts and other cultural events.



9. *Fortnite* is free for everyone to download and play. To generate revenue, Epic offers users various in-app purchases of content for use within the app, such as digital avatars, costumes, dances, or other cosmetic enhancements.



26 10. In the first year after *Fortnite* was released in 2017, the game
27 attracted over 125 million players; in the years since, *Fortnite* has topped 350 million
28 players and has become a global cultural phenomenon.

1 11. Similar to a PC or a Mac personal computer, smart mobile devices
 2 use an “operating system” or “OS” to provide core device functionality and to enable
 3 the operation of compatible programs. As with PCs, the commercial viability of an OS
 4 for mobile devices (a “mobile OS”) depends on the availability of a large number of
 5 compatible apps that cater to the preferences and needs of users.

6 12. Google controls the most ubiquitous OS used in mobile devices, the
 7 Android OS. Android OS is used by billions of users the world over, and boasts nearly
 8 3 million compatible apps.

9 13. Android is the only commercially viable OS that is widely available
 10 to license by companies that design and sell smart mobile devices, known as original
 11 equipment manufacturers (“OEMs”). Accordingly, when OEMs select a mobile OS to
 12 install on their devices, they have only one option: Google’s Android OS. Google
 13 therefore has monopoly power in the market for mobile operating systems that are
 14 available for license by OEMs (the Merchant Market for Mobile Operating Systems
 15 (*infra* Part I)).

16 14. Google has not been satisfied with its control of the Android OS.
 17 Notwithstanding its promises to make Android devices open to competition, Google has
 18 erected contractual and technological barriers that foreclose competing ways of
 19 distributing apps to Android users, ensuring that the Google Play Store accounts for
 20 nearly all the downloads of apps from app stores on Android devices. Google thus
 21 maintains a monopoly over the market for distributing mobile apps to Android users,
 22 referred to herein as the “Android App Distribution Market” (*infra* Part II).

23 15. For example, Google bundles the Google Play Store with a set of
 24 other Google services that Android OEMs must have on their devices (such as Gmail,
 25 Google Search, Google Maps, and YouTube) and conditions the licensing of those
 26 services on an OEM’s agreement to pre-install the Google Play Store and to
 27 prominently display it. Google then interferes with OEMs’ ability to make third-party
 28 app stores or apps available on the devices they make. These restrictions effectively

1 foreclose competing app stores—and even single apps—from what could be a primary
 2 distribution channel.

3 16. Epic’s experience with one OEM, OnePlus, is illustrative. Epic
 4 struck a deal with OnePlus to make Epic games available on its phones through an Epic
 5 Games app. The Epic Games app would have allowed users to seamlessly install and
 6 update Epic games, including *Fortnite*, without obstacles imposed by Google’s Android
 7 OS. But Google forced OnePlus to renege on the deal, citing Google’s “particular[]
 8 concern” about Epic having the ability to install and update mobile games while
 9 “bypassing the Google Play Store”.

10 17. Another OEM, LG, told Epic that its contract with Google did not
 11 allow it to enable the direct distribution of apps, and that the OEM could not offer any
 12 functionality that would install and update Epic games except through the Google Play
 13 Store.

14 18. Google also enforces anti-competitive restrictions against app
 15 developers. Specifically, Google contractually prohibits app developers from offering
 16 on the Google Play Store any app that could be used to download other apps, *i.e.*, any
 17 app that could compete with the Google Play Store in app distribution. And Google
 18 further requires app developers to distribute their apps through the Google Play Store if
 19 they wish to advertise their apps through valuable advertising channels controlled by
 20 Google, such as ad placements on Google Search or on YouTube that are specially
 21 optimized to advertise mobile apps.

22 19. Finally, Google stifles or blocks consumers’ ability to download app
 23 stores and apps directly from developers’ websites. As anyone who has tried to
 24 download directly on an Android device knows, it is significantly different than the
 25 simple process available on a personal computer: directly downloading *Fortnite* on an
 26 Android device can involve a dozen steps, requiring the user to change default settings
 27 and bravely click through multiple dire warnings. And even if a persistent user manages
 28 to install a competing app store, Google prevents such stores from competing on equal

1 footing with the Google Play Store by blocking them from offering basic functions,
 2 such as automatic updating of apps in the background, which is available for apps
 3 downloaded from the Google Play Store.

4 20. Google engages in these anticompetitive acts to eliminate consumer
 5 choice and competition in mobile app distribution. Google has no legitimate
 6 justification for these restrictions. Google therefore has broken its promises that
 7 Android would be an “open” ecosystem in which other participants could participate
 8 fairly.

9 21. But Google does not stop at app distribution. Google also imposes
 10 anti-competitive restrictions in the separate Market for Android In-app Payment
 11 Processing (*infra* Part III).

12 22. App developers who sell digital content for consumption within the
 13 app itself require seamless payment processing tools to execute purchases. App
 14 developers, including Epic, may develop such payment processing tools internally or
 15 use a host of payment processing tools offered by multiple competing third parties.

16 23. Google, however, ties distribution through its Google Play Store
 17 with developers’ exclusive use of Google’s own payment processing tool, called
 18 Google Play Billing, to process in-app purchases of digital content. Indeed, app
 19 developers that distribute through the Google Play Store are even prohibited from
 20 offering Android users the *choice* of additional payment processing options alongside
 21 Google’s for digital content. And because Google has a monopoly in the Android App
 22 Distribution Market, app developers cannot practically avoid this anti-competitive tie by
 23 electing app distribution through an alternative channel.

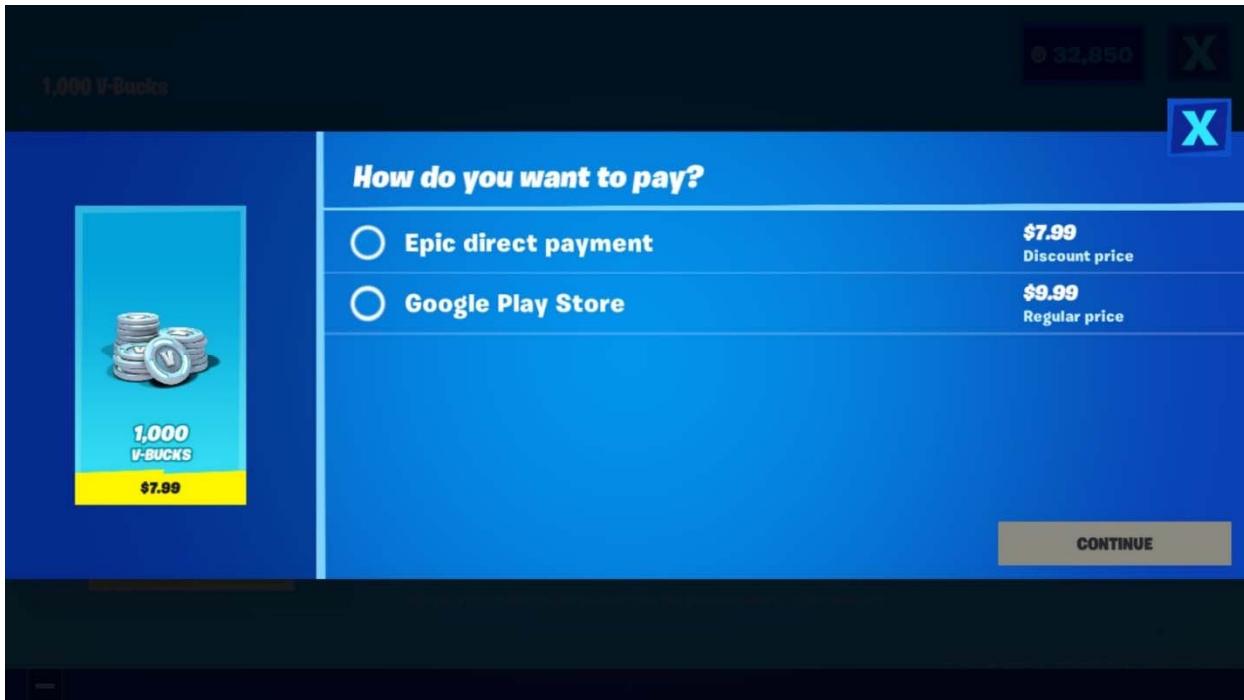
24 24. The result is that in every in-app transaction for digital content, it is
 25 Google, not the app developer, that collects the payment in the first instance. Google
 26 then taxes the transaction at an exorbitant 30% rate, remitting the remaining 70% to the
 27 developer who actually made the sale. This 30% commission is often *ten times* higher
 28 than the price typically paid for the use of other electronic payment solutions.

1 25. Moreover, through this tie, Google inserts itself as an intermediary
 2 between each seller and each buyer for every purchase of digital content within the
 3 Android ecosystem, collecting for itself the personal information of users, which Google
 4 then uses to give an anti-competitive edge to its own advertising services and mobile
 5 app development business.

6 26. But for Google's monopolistic conduct, competing stores could offer
 7 consumers and developers choice in distribution and payment processing. Indeed, Epic,
 8 which distributes gaming apps through its own store to users of personal computers,
 9 would open a store to compete with Google's and offer developers more innovation and
 10 more choice, including in payment processing. App developers would not have to pay
 11 Google's supra-competitive tax of 30%, as the price of distribution and payment
 12 processing alike would be set by market forces rather than by Google's fiat. Developers
 13 could address any payment-related issues (such as refunds) directly with their own
 14 customers rather than through Google. And users and developers, jointly, would get to
 15 decide whether users' data should be utilized for other purposes.

16 27. Google's anti-competitive conduct has injured Epic, both as an app
 17 developer and as a potential competitor in app distribution and payment processing.
 18 Epic has repeatedly approached Google and asked to negotiate relief that would stop
 19 Google's unlawful and anti-competitive restrictions on app developers and consumers.
 20 But Google would not budge.

21 28. Because of Google's refusal to stop its ongoing anti-competitive and
 22 unlawful conduct, on August 13, 2020, Epic began providing *Fortnite* players the choice
 23 of using Epic's own direct payment tool as an alternative to Google's overpriced Billing
 24 tool, sharing with players who chose to use Epic's payment tool the resulting savings.



29. In retribution, Google removed *Fortnite* from Google Play Store listings, preventing new players from obtaining the game. Google also prevented Android users who acquired *Fortnite* from the Google Play Store from obtaining app updates they will need to continue playing with their friends and family.

30. Epic has publicly advocated for years that Google cease the anti-competitive conduct addressed in this Complaint. Google refused to change its industry-impacting conduct. Instead, Google offered to placate Epic by offering it preferential terms on side deals, such as YouTube sponsorships and cloud services, if Epic agreed to distribute *Fortnite* in the Google Play Store and acceded to Google's 30% tax. Google has reached at least one preferential deal with another mobile game developer, Activision Blizzard, and Epic believes that Google is using similar deals with other companies to allow Google to keep its monopolistic behavior publicly unchallenged. But Epic is not interested in any side deals that might benefit Epic alone while leaving Google's anti-competitive restraints intact; instead, Epic is focused on opening up the Android ecosystem for the benefit of *all* developers and consumers.

31. Accordingly, Epic seeks injunctive relief in court. Google's conduct has caused and continues to cause Epic financial harm, but Epic is *not* bringing this case to recover these damages; Epic is not seeking any monetary relief, but rather only an order enjoining Google from continuing to impose its anti-competitive conduct on the Android ecosystem.

PARTIES

32. Plaintiff Epic Games, Inc. is a Maryland corporation with its principal place of business in Cary, North Carolina. Epic's mission is "to create fun games we want to play and to build the art and tools needed to bring those games to life". Epic was founded in 1991 by a college student named Tim Sweeney. Mr. Sweeney ran Epic out of his parents' basement and distributed, by mail, Epic's first commercial personal computer software, a game named *ZZT*. Since then, Epic has developed several popular entertainment software products that can be played on an array of platforms—such as personal computers, gaming consoles, and smart mobile devices. Epic also creates and distributes the *Unreal Engine*, a powerful software suite that allows competing game developers and others to create realistic three-dimensional content, including video games, architectural recreations, television shows, and movies. An Epic subsidiary also develops and distributes the popular *Houseparty* app, which enables video chatting and social gaming on smart mobile devices and personal computers. Worldwide, approximately 400 million users have signed up to play Epic games, and each day 30 to 40 million individuals log into an Epic game.

33. Defendant Google LLC is a Delaware limited liability company with its principal place of business in Mountain View, California. Google LLC is the primary operating subsidiary of the publicly traded holding company Alphabet Inc. The sole member of Google LLC is XXVI Holdings, Inc., a Delaware corporation with its principal place of business in Mountain View, California. Google LLC contracts with all app developers that distribute their apps through the Google Play Store and is

1 therefore a party to the anti-competitive contractual restrictions at issue in this
 2 Complaint.

3 34. Defendant Google Ireland Limited (“Google Ireland”) is a limited
 4 company organized under the laws of Ireland with its principal place of business in
 5 Dublin, Ireland, and a subsidiary of Google LLC. Google Ireland contracts with all app
 6 developers that distribute their apps through the Google Play Store and is therefore a
 7 party to the anti-competitive contractual restrictions at issue in this Complaint.

8 35. Defendant Google Commerce Limited (“Google Commerce”) is a
 9 limited company organized under the laws of Ireland with its principal place of business
 10 in Dublin, Ireland, and a subsidiary of Google LLC. Google Commerce contracts with
 11 all app developers that distribute their apps through the Google Play Store and is
 12 therefore a party to the anti-competitive contractual restrictions at issue in this
 13 Complaint.

14 36. Defendant Google Asia Pacific Pte. Limited (“Google Asia Pacific”)
 15 is a private limited company organized under the laws of Singapore with its principal
 16 place of business in Mapletree Business City, Singapore, and a subsidiary of Google
 17 LLC. Google Asia Pacific contracts with all app developers that distribute their apps
 18 through the Google Play Store and is therefore a party to the anti-competitive
 19 contractual restrictions at issue in this Complaint.

20 37. Defendant Google Payment Corp. (“Google Payment”) is a
 21 Delaware corporation with its principal place of business in Mountain View, California,
 22 and a subsidiary of Google LLC. Google Payment provides in-app payment processing
 23 services to Android app developers and Android users and collects a 30% commission
 24 on many types of processed payments, including payments for apps sold through the
 25 Google Play Store and in-app purchases made within such apps.

JURISDICTION AND VENUE

27 38. This Court has subject-matter jurisdiction over Epic’s federal
 28 antitrust claims pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28 U.S.C.

1 §§ 1331 and 1337. The Court has supplemental jurisdiction over Epic’s state law claims
 2 pursuant to 28 U.S.C. § 1367. The Court also has subject-matter jurisdiction over the
 3 state-law claims pursuant to 28 U.S.C. § 1332 based on the diversity of citizenships of
 4 Plaintiff, on the one hand, and of Defendants, on the other, and the amount in
 5 controversy exceeding \$75,000.

6 39. This Court has personal jurisdiction over the Defendants. Google
 7 LLC and Google Payment are headquartered in this District. All Defendants have
 8 engaged in sufficient minimum contacts with the United States and have purposefully
 9 availed themselves of the benefits and protections of United States and California law,
 10 such that the exercise of jurisdiction over them would comport with due process
 11 requirements. Further, the Defendants have consented to the exercise of personal
 12 jurisdiction by this Court.

13 40. Each of the Defendants except Google Payment is party to a Google
 14 Play Developer Distribution Agreement (the “DDA”) with Epic. Section 16.8 of the
 15 DDA provides that the parties “agree to submit to the exclusive jurisdiction of the
 16 federal or state courts located within the county of Santa Clara, California, to resolve
 17 any legal matter arising from or relating to this Agreement”. Section 16.8 further
 18 provides that “[a]ll claims arising out of or relating to this Agreement or Your
 19 relationship with Google under this Agreement will be governed by the laws of the State
 20 of California, excluding California’s conflict of laws provisions.” The claims addressed
 21 in this Complaint relate to the DDA or to Epic’s relationship with Google under the
 22 DDA, or in the alternative such claims arise out of the same nucleus of operative facts
 23 as other claims as to which the Court may exercise personal jurisdiction over each
 24 Defendant, so that the exercise of pendent personal jurisdiction would be proper.

25 41. Google Payment is party to a Google Payments—Terms of
 26 Service—Seller Agreement with Epic. Section 11.3 of that Agreement provides that
 27 “[t]he exclusive venue for any dispute related to this Agreement will be the state or
 28 federal courts located in Santa Clara County, California, and each party consents to

1 personal jurisdiction in these courts.” Section 11.3 further provides that “The laws of
 2 California, excluding California’s choice of law rules, and applicable federal United
 3 States laws will govern this Agreement.” The dispute between Google Payment and
 4 Epic relates to the parties’ Agreement, or in the alternative Epic’s claims arise out of the
 5 same nucleus of operative facts as other claims as to which the Court may exercise
 6 personal jurisdiction over Google Payment, so that the exercise of pendent personal
 7 jurisdiction would be proper.

8 42. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
 9 because Google LLC and Google Payment maintain their principal places of business in
 10 the State of California and in this District, because a substantial part of the events or
 11 omissions giving rise to Epic’s claims occurred in this District, and because, pursuant to
 12 28 U.S.C. § 1391(c)(3), any Defendants not resident in the United States may be sued in
 13 any judicial district and their joinder with others shall be disregarded in determining
 14 proper venue. In the alternative, personal jurisdiction and venue also may be deemed
 15 proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because
 16 Defendants may be found in or transact business in this District.

INTRADISTRICT ASSIGNMENT

18 43. Pursuant to Civil Local Rule 3-2(c), this antitrust case shall not be
 19 assigned to a particular Division of this District, but shall be assigned on a District-wide
 20 basis.

RELEVANT FACTS

I. Google Dominates the Merchant Market for Mobile Operating Systems.

23 44. To understand how Google effectively monopolizes the Android
 24 App Distribution and Android In-App Payment Processing Markets, as described below
 25 in Parts II and III, it is helpful to understand the background of smart mobile devices
 26 and how Google effectively dominates the related Merchant Market for Mobile
 27 Operating Systems through its control over the Android operating system.
 28

1 **A. The Merchant Market for Mobile Operating Systems**

2 i. Product Market Definition

3 45. Smart mobile devices are handheld, portable electronic devices that
 4 can connect wirelessly to the internet and are capable of multi-purpose computing
 5 functions, including, among other things, Internet browsing, using social media,
 6 streaming video, listening to music, or playing games. Smart mobile devices include
 7 smartphones and tablet computers. Many consumers may *only* have a smart mobile
 8 device and no other computer. Such consumers are particularly hard-hit by Google's
 9 unlawful conduct in mobile-related markets.

10 46. Like laptop and desktop personal computers, mobile devices require
 11 an operating system or "OS" that enables multi-purpose computing functionality. A
 12 mobile OS, just like the OS of any computer, is a piece of software that provides basic
 13 functionality to users of mobile devices such as button controls, touch commands,
 14 motion commands, and the basic "graphical user interface", which includes "icons" and
 15 other visual elements representing actions that the user can take. A mobile OS also
 16 manages the basic operations of a smart mobile device, such as cellular or WiFi
 17 connectivity, GPS positioning, camera and video recording, speech recognition, and
 18 other features. In addition, a mobile OS permits the installation and operation of mobile
 19 apps that are compatible with the particular OS and facilitates their use of the device's
 20 OS-managed core functionality.

21 47. To ensure that every user can access the basic functions of a mobile
 22 device "out of the box", that is at the time he/she purchases the device, an OEM must
 23 pre-install an OS on each device prior to its sale. This is similar to a personal computer
 24 that comes pre-installed with Microsoft Windows for PC or Apple's macOS for a Mac
 25 computer. OEMs design mobile devices to ensure the device's compatibility with a
 26 particular OS the OEM chooses for a particular model of mobile device, so that the
 27 device may utilize the capabilities of that OS. For OEMs, the process of implementing
 28

1 a mobile OS requires significant time and investment, making switching to another
 2 mobile OS difficult, expensive, and time-consuming.

3 48. The vast majority of OEMs do not develop their own OS and must
 4 choose an OS that can be licensed for installation on smart mobile devices they design.
 5 There is therefore a relevant Merchant Market for Mobile OSs comprising mobile OSs
 6 that OEMs can license for installation on the smart mobile devices they manufacture.
 7 The market does not include proprietary OSs that are not available for licensing, such as
 8 Apple's mobile OS, called iOS. Historically, the Merchant Market for Mobile OSs has
 9 included the Android OS, developed by Google; the Tizen mobile OS, a partially open-
 10 source mobile OS that is developed by the Linux Foundation and Samsung; and the
 11 Windows Phone OS developed by Microsoft.

12 49. Some consumers continue to use cellular phones that do not have
 13 multi-purpose, computing functions. These simple phones resemble older “flip
 14 phones”, for example; they are not part of the smart mobile device category. These
 15 phones do not support mobile apps such as *Fortnite* and are instead typically limited to
 16 basic cellular functionality like voice calls and texting. The simple operating systems
 17 on these phones, to the extent they exist, cannot support the wide array of features
 18 supplied by the OSs on smart mobile devices and are not part of the Merchant Market
 19 for Mobile OSs defined herein.

20 50. To the extent that electronic devices other than smart mobile devices
 21 use operating systems, those OSs are not compatible with mobile devices, and therefore
 22 are not included in the Merchant Market for Mobile OSs defined herein. For example,
 23 computing devices that are not handheld and portable, that are not capable of multi-
 24 purpose computing functions and/or that lack cellular connectivity—such as desktop
 25 computers, laptops, or gaming consoles—are not considered to be “smart mobile
 26 devices”. Gaming devices like Sony’s PlayStation 4 (“PS4”) and Microsoft’s Xbox are
 27 physically difficult to transport, require a stable WiFi or wired connection to operate
 28 smoothly, and require an external screen for the user to engage in game play. Thus,

even if a gamer owns, for example, a dedicated, non-portable gaming console such as a PS4, which connects to and enables gaming via his/her TV, he/she will not consider that PS4 a reasonable substitute for a mobile device like a smartphone, nor would he/she consider the version of any game created for his/her PS4 to substitute for the mobile app version of such a game. That is because the portability (and typically for smartphones the cellular connectivity) of the mobile devices enable the consumer to play mobile games away from home or anywhere in the home. Indeed, for this reason, game developers often distribute multiple versions of a game, each of which is programmed for compatibility with a particular type of device and its operating system.

ii. Geographic Market Definition

51. OEMs license mobile OSs for installation on mobile devices globally, excluding China. Google's operations in China are limited, and it does not make available many of its products for mobile devices sold within China. This is based in part on legal and regulatory barriers to the distribution of mobile OS-related software imposed by China. Further, while Google contractually requires OEMs licensing Android outside of China not to sell any devices with competing Android-compatible mobile OSs, it imposes no such restriction on devices sold within China. Because the OEMs that sell Android mobile devices both within and outside China have committed to this contractual restriction, such OEMs must sell, outside of China, devices with Google's Android OS. The geographic scope of the relevant Merchant Market for Mobile OSs is therefore worldwide, excluding China.

B. Google's Monopoly Power in the Merchant Market for Mobile OSs

52. Google has monopoly power in the Merchant Market for Mobile OSs through its Android OS. As determined by the European Commission during the course of its investigation of Android, the Android OS, licensed to OEMs in relevant respects by Google, is installed on over 95% of all mobile devices sold by OEMs utilizing a merchant mobile OS. Indeed, Android OS is installed on nearly 75% of all smart mobile devices sold by *all* OEMs, including even those OEMs that use a

1 proprietary mobile OS they developed exclusively for their own use (such as Apple's
 2 iOS).

3 53. A mobile ecosystem typically develops around one or more mobile
 4 OSs, such as the Android OS. The "Android ecosystem" is a system of mobile products
 5 (such as devices, apps and accessories) designed to be inter-dependent and compatible
 6 with each other and the Android OS. Ecosystem participants include an array of
 7 participating stakeholders, such as Google, OEMs that make Android-compatible
 8 devices, developers of Android-compatible apps, Android app distribution platforms,
 9 including app stores, the makers of ancillary hardware such as headphones or speakers,
 10 cellular carriers, and others.

11 54. Mobile ecosystems benefit from substantial network effects—that is,
 12 the more developers that design useful apps for a specific mobile OS, the more
 13 consumers will be drawn to use the relevant OS for which those apps are designed; the
 14 more consumers that use an OS, the more developers want to develop even more apps
 15 for that OS. As determined in *United States v. Microsoft, Inc.*, No. 98-1232 (D.D.C.),
 16 new entrants into an operating system market thus face an "applications barrier to
 17 entry". An applications barrier to entry arises because a new operating system will be
 18 desirable to consumers only if a broad array of software applications can run on it, but
 19 software developers will find it profitable to create applications that run on an operating
 20 system only if there is a large existing base of users.

21 55. To overcome this challenge and to attract app developers and users,
 22 Google has continuously represented that Android is an "open" ecosystem and that any
 23 ecosystem participant could create Android-compatible products without unnecessary
 24 restrictions. Indeed, Google LLC's CEO, Sundar Pichai, represented in 2014 that
 25 Android "is one of the most open systems that I've ever seen".⁵ And Andy Rubin, an
 26
 27

⁵ Stuart Dredge, *Google's Sundar Pichai on wearable tech: 'We're just scratching the surface'*, The Guardian (Mar. 9, 2014), <https://www.theguardian.com/technology/2014/mar/09/google-sundar-pichai-android-chrome-sxsw>.

1 Android founder who is described by some as the “Father of Android”, said when he
 2 departed Google in 2013 that “at its core, Android has always been about openness”.⁶

3 56. But the reality is quite different. Despite these claims of openness,
 4 Google has now effectively closed the Android ecosystem through its tight control of
 5 the Android OS. And, as the dominant OS licensor, Google now benefits from these
 6 substantial network effects which makes participation on its platform a “must-have”
 7 market for developers.

8 57. As further described below, Google uses the Android OS to restrict
 9 which apps and app stores OEMs are permitted to pre-install on the devices they make
 10 and to impose deterrents to the direct distribution of competing app stores and apps to
 11 Android users, all at the expense of competition in the Android ecosystem.

12 58. Because of Google’s monopoly power in the Merchant Market for
 13 Mobile OSs, OEMs, developers and users cannot avoid such effects by choosing
 14 another mobile OS. OEMs such as ZTE and Nokia have stated that other non-
 15 proprietary OSs are poor substitutes for the Android OS and are not a reasonable
 16 alternative to licensing the Android OS. One important reason is that other mobile OSs
 17 presently do not support many high-quality and successful mobile apps, which
 18 consumers find essential or valuable when choosing a mobile device. These
 19 circumstances have biased consumers against the purchase of mobile devices with non-
 20 proprietary mobile OSs other than Android OS. OEMs thus have no choice but to agree
 21 to Google’s demands because it is critical that they be able to offer a popular mobile OS
 22 and corresponding ecosystem to consumers who are choosing which mobile device to
 23 purchase.

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 27 ⁶ Andy Rubin, *Andy Rubin’s Email to Android Partners*, The Wall Street Journal (Mar. 13, 2013),
 28 available at <https://blogs.wsj.com/digits/2013/03/13/andy-rubins-email-to-android-partners/?mod=WSJBlog>.

1 **II. Google Unlawfully Maintains a Monopoly in the Android Mobile App**
 2 **Distribution Market.**

3 59. Mobile apps make mobile devices more useful and valuable because
 4 they add functionality to the mobile device that caters to the specific interests of each
 5 mobile device user. For example, they facilitate video chats with friends and family,
 6 banking online, shopping, job hunting, photo editing, reading digital news sources,
 7 editing documents, or playing a game like *Fortnite*. Many workers use their smart
 8 mobile device to check work schedules, access company email, or use other employer
 9 software while outside the workplace. For many consumers, a smartphone or tablet is
 10 the only way to access these functions, because the consumer does not own a personal
 11 computer or because the consumer can only access the Internet using a cellular
 12 connection. But even when a consumer can perform the same or similar functions on a
 13 personal computer, the ability to access apps “on the go” using a handheld, portable
 14 device remains valuable and important.

15 60. Whereas some apps may be pre-installed by OEMs, OEMs cannot
 16 anticipate all the various apps a specific consumer may desire to use. Moreover, many
 17 consumers have different preferences as to which apps they want, and it would be
 18 undesirable for OEMs to load the devices they sell with unwanted apps that take up
 19 valuable space on the mobile device. And many apps that consumers may ultimately
 20 use on their device will be developed after they buy the device. Accordingly,
 21 consumers who seek to add new functionalities to a mobile device and customize the
 22 device for their own use need to obtain and install mobile apps themselves after
 23 purchasing their device. Currently, on Android devices, this is done most often through
 24 the Google Play Store, Google’s own “app store”. The Google Play Store is a digital
 25 portal set up by Google and through which mobile apps can be browsed, searched for,
 26 purchased (if necessary), and downloaded by a consumer. App stores such as the
 27 Google Play Store, alongside several other ways by which apps can be distributed to the
 28 hundreds of millions of consumers using Android-based mobile devices, comprise the
 Android App Distribution Market, defined below.

1 61. Through various anti-competitive acts and unlawful restraints on
 2 competition, Google has maintained a monopoly in the Android Mobile App
 3 Distribution market, causing ongoing harm to competition and injury to OEMs, app
 4 distributors, app developers, and consumers. Google's restraints of trade belie
 5 representations Google currently makes to developers that "as an open platform,
 6 Android is about choice" and that app developers "can distribute [their] Android apps to
 7 users in any way [they] want, using any distribution approach or combination of
 8 approaches that meets [their] needs", including by allowing users to directly download
 9 apps "from a website" or even by "emailing them directly to consumers".⁷

10 **A. The Android App Distribution Market**

11 i. Product Market Definition

12 62. There is a relevant market for the distribution of apps compatible
 13 with the Android OS to users of mobile devices (the "Android App Distribution
 14 Market"). This Market is comprised of all the channels by which mobile apps may be
 15 distributed to the hundreds of millions of users of mobile devices running the Android
 16 OS. The Market primarily includes Google's dominant Google Play Store, with smaller
 17 stores, such as Samsung's Galaxy Store and Aptoide, trailing far behind. Nominally
 18 only, the direct downloading of apps without using an app store (which Google
 19 pejoratively describes as "sideloading") is also within this market.

20 63. App stores allow consumers to easily browse, search for, access
 21 reviews on, purchase (if necessary), download, and install mobile apps, using the mobile
 22 device itself and an Internet connection. OEMs find it commercially unreasonable to
 23 ship a smart mobile device to a consumer without at least one app store installed, as a
 24 consumer's ability to obtain new mobile apps is an important part of the value provided
 25 by smart mobile devices.

26
 27 ⁷ Google Play Developers Page, *Alternative distribution options*,
 28 <https://developer.android.com/distribute/marketing-tools/alternative-distribution> (last accessed June 7,
 2020).

1 64. App stores are OS-specific, meaning they distribute only apps that
2 are compatible with the specific mobile OS on which the app store is used. A consumer
3 who has a mobile device running the Android OS cannot use apps created for a different
4 mobile operating system. An owner of an Android OS device will use an Android
5 compatible app store, and such app stores distribute only Android-compatible mobile
6 apps. That consumer may not substitute an Android app store with, for example,
7 Apple's App Store, as that app store is not available on Android devices, is not
8 compatible with the Android OS, and does not offer apps that are compatible with the
9 Android OS. Non-Android mobile app distribution platforms—such as the Windows
10 Mobile Store used on Microsoft's Windows Mobile OS or the Apple App Store used on
11 Apple iOS devices—cannot substitute for Android-specific app distribution platforms,
12 and they are therefore not part of the Android App Distribution Market defined herein.

13 65. Likewise, stores distributing personal computer or gaming console
14 software are not compatible with the Android OS and do not offer Android-compatible
15 apps: the Epic Games Store distributes software compatible with personal computers,
16 the Microsoft Store for Xbox distributes software compatible with the Xbox game
17 consoles, and the PlayStation Store distributes software compatible with the PlayStation
18 game consoles. A user cannot download mobile apps for use on his/her Android device
19 by using such non-Android OS, non-mobile software distribution platforms. They
20 therefore are not part of the Android App Distribution Market.

21 66. The same is true even when an app or game, like *Fortnite*, is
22 available for different types of platforms running different operating systems, because
23 only the OS-compatible version of that software can run on a specific type of device or
24 computer. Accordingly, as a commercial reality, an app developer that wishes to
25 distribute mobile apps for Android mobile devices must develop an Android-specific
26 version of the app and avail itself of the Android App Distribution Market.

27 67. In the alternative only, the Android App Distribution Market is a
28 relevant, economically distinct sub-market of a hypothetical broader antitrust market for

1 the distribution of mobile apps to users of all mobile devices, whether Android or
 2 Apple's iOS.

3 ii. Geographic Market Definition

4 68. The geographic scope of the Android App Distribution Market is
 5 worldwide, excluding China. Outside of China, app distribution channels, including app
 6 stores, are developed and distributed on a global basis; OEMs, in turn, make app stores,
 7 such as the Google Play Store, available on Android devices on a worldwide basis
 8 (except in China). China is excluded from the relevant market because legal and
 9 regulatory barriers prevent the operation of many global app stores, including the
 10 Google Play Store, within China. Additionally, app stores prevalent in China are not
 11 available, or have little presence, outside of China.

12 **B. Google's Monopoly Power in the Android App Distribution Market**

13 69. Google has monopoly power in the Android App Distribution
 14 Market.

15 70. Google's monopoly power can be demonstrated by, among other
 16 things, Google's massive market share in terms of apps downloaded. The European
 17 Commission determined that, within the Market, more than 90% of app downloads
 18 through app stores have been done through the Google Play Store. Indeed, although app
 19 stores for merchant mobile OSs other than Android are not included in the Android App
 20 Distribution Market, the European Commission found that the only such app store with
 21 any appreciable presence was the Windows Mobile Store, which was compatible with
 22 the Windows Mobile OS. The Commission determined that even if the Windows
 23 Mobile Store share was included in the market, the Google Play Store would still have
 24 had a market share greater than 90%.

25 71. Other existing Android mobile app stores do not discipline Google's
 26 exercise of monopoly power in the Android App Distribution Market. No other app
 27 store is able to reach nearly as many Android users as the Google Play Store.
 28 According to the European Commission, the Google Play Store is pre-installed by

1 OEMs on practically all Android mobile devices sold outside of China. As a result, no
 2 other Android app store comes close to that number of pre-installed users. With the
 3 exception of app stores designed for and installed only on mobile devices sold by those
 4 respective OEMs, such as Samsung Galaxy Apps and the LG Electronics App Store, no
 5 other Android app store is pre-installed on more than 10% of Android devices, and
 6 many have no appreciable market penetration at all. Aptoide, for example, is an
 7 Android app store that claims to be the largest “independent” app store outside of China,
 8 but it comes pre-installed on no more than 5% of Android mobile devices.

9 72. Because of Google’s success in maintaining its monopoly in Android
 10 app distribution, there is no viable substitute to distributing Android apps through the
 11 Google Play Store. As a result, the Google Play Store offers over 3 million apps,
 12 including all of the most popular Android apps, compared to just 700,000 apps offered
 13 by Aptoide, the Android app store with the next largest listing. The Google Play Store
 14 thereby benefits from ongoing network effects based on the large number of
 15 participating app developers and users. The large number of apps attracts large numbers
 16 of users, who value access to a broad range of apps, and the large number of users
 17 attract app developers who wish to access more Android users. Android OEMs too find
 18 it commercially unreasonable to make and sell phones without the Google Play Store,
 19 and they view other app stores as poor substitutes for the Google Play Store because of
 20 the lower number and lesser quality of apps they offer.

21 73. As further proof of its monopoly power, Google imposes a supra-
 22 competitive commission of 30% on the price of apps purchased through the Google Play
 23 Store, which is a far higher commission than would exist under competitive conditions.

24 74. Furthermore, Google’s monopoly power in app distribution is not
 25 constrained by competition at the smart mobile device level because Android device
 26 users face significant switching costs and lock-in to the Android ecosystems that serves
 27 to protect Google’s monopoly power, and consumers are unable to account for Google’s
 28 anticompetitive conduct when they purchase a smart mobile device.

1 75. *First*, consumers are deterred from leaving the Android ecosystem
 2 due to the difficulty and costs of switching. Consumers choose a smartphone based in
 3 part on the OS that comes pre-installed on that device and the ecosystem in which the
 4 device participates (in addition to a bundle of other features, such as price, battery life,
 5 design, storage space, and the range of available apps and accessories). Once a
 6 consumer has selected a smartphone, the consumer cannot replace the mobile OS that
 7 comes pre-installed on it with an alternative mobile OS. Rather, a consumer who
 8 wishes to change the OS must purchase a new smartphone entirely. In addition, mobile
 9 OSs have different designs, controls, and functions that consumers must learn to
 10 navigate. Over time, consumers who use Android devices learn to operate efficiently on
 11 the Android OS. For example, the Android OS layout differs from iOS in a wide range
 12 of functions, including key features such as searching and installing “widgets” on the
 13 phone, organizing and searching the phone’s digital content, configuring control center
 14 settings, and organizing photos. The cost of learning to use a different mobile OS is
 15 part of consumers’ switching costs.

16 76. *Second*, switching from Android devices may also result in a
 17 significant loss of personal and financial investment that consumers put into the
 18 Android ecosystem. Because apps, in-app content and many other products are
 19 designed for or are only compatible with a particular mobile OS, switching to a new
 20 mobile OS may mean losing access to such products or to data. Even if versions of such
 21 apps and products are available within the new ecosystem chosen by the consumer, the
 22 consumer would have to go through the process of downloading them again onto the
 23 new devices and may have to purchase them anew. As a result, the consumer may be
 24 forced to abandon his or her investment in at least some of those apps, along with any
 25 purchased in-app content and consumer-generated data on those apps.

26 77. *Third*, consumers are not able to avoid the switching costs and lock-
 27 in to the Android OS ecosystem by acquiring more information prior to the purchase of
 28 the Android device. The vast majority of mobile device consumers have no reason to

1 inquire, and therefore do not know about, Google’s anticompetitive contractual
 2 restraints and policies. Furthermore, these consumers rationally do not give much
 3 weight to Google’s anticompetitive conduct and anticompetitive fees when deciding
 4 whether to switch from an Android device. Consumers consider many features when
 5 deciding which smartphone or tablet to purchase, including design, brand, processing
 6 power, battery life, functionality and cellular plan. These features are likely to play a
 7 substantially larger role in a consumer’s decision as to which smart mobile device to
 8 purchase than Google’s anticompetitive conduct in the relevant markets, particularly
 9 given that a consumer may consider the direct monetary cost of Google’s conduct to be
 10 small relative to the price of smart mobile devices, if the consumer is even aware of the
 11 conduct or assigns it such a cost at all. For example, over time a typical Android user
 12 may make multiple small purchases of paid apps and in-app digital content—
 13 accumulating to \$100 or less annually—but may spend several hundreds of dollars at
 14 once to purchase an Android smart mobile device.

15 78. Consumers are also unable to determine the “lifecycle price” of
 16 devices—*i.e.*, to accurately assess at the point of purchase how much they will end up
 17 spending in total (including on the device and all apps and in-app purchases) for the
 18 duration of their ownership of the device. Consumers cannot know in advance of
 19 purchasing a device all of the apps or in-app content that they may want to purchase
 20 during the usable lifetime of the device. Consumers’ circumstances may change.
 21 Consumers may develop new interests. They may learn about new apps or in-app
 22 content that becomes available only after purchasing a device. New apps and in-app
 23 content will continue to be developed and marketed after a consumer purchases a
 24 smartphone or tablet. All of these factors may influence the amount of consumers’ app
 25 and in-app purchases. Because they cannot know or predict all such factors when
 26 purchasing mobile devices, consumers are unable to calculate the lifecycle prices of the
 27 devices. This prevents consumers from effectively taking Google’s anticompetitive
 28 conduct into account when making mobile device purchasing decisions.

1 79. Because consumers face substantial switching costs and lock-in to
 2 the Android OS, developers can only gain access to these users by also participating in
 3 the Android ecosystem. Thus, developers face an even greater cost in not participating
 4 in the Android ecosystem—loss of access to hundreds of millions of Android OS users.

5 **C. Google's Anti-Competitive Conduct Concerning the Android App
 6 Distribution Market**

7 80. Google has willfully and unlawfully maintained its monopoly in the
 8 Android App Distribution Market through a series of related anti-competitive acts that
 9 have foreclosed competing ways of distributing apps to Android users.

10 i. Google's Conduct Toward OEMs

11 81. Google imposes anti-competitive constraints on Android OEMs
 12 based on their need for access to a viable Android app store and other important services
 13 provided by Google.

14 82. *First*, Google conditions OEMs' licensing of the Google Play Store,
 15 as well as other essential Google services and the Android trademark, on OEMs'
 16 agreements to provide the Google Play Store with preferential treatment compared to
 17 any other competing app store. Specifically, to access the Google Play Store, Android
 18 OEMs (which, as noted above, comprise virtually all OEMs that obtain an OS on the
 19 merchant market) have signed a Mobile Application Distribution Agreement
 20 ("MADA") with Google. A MADA confers a license to a bundle of products
 21 comprising proprietary Google apps, Google-supplied services necessary for
 22 functioning of mobile apps, and the Android trademark. Through its MADAs with
 23 Android OEMs, Google requires OEMs to locate the Google Play Store on the "home
 24 screen"⁸ of each mobile device. Android OEMs must further pre-install up to 30
 25 Google mandatory apps and must locate these apps on the home screen or on the next
 26 screen, occupying valuable space on each user's mobile device that otherwise could be
 27 occupied by competing app stores and other services. These requirements ensure that

28 ⁸ The default "home screen" is the default display, prior to any changes made by users, that appears
 without scrolling when the device is in active idle mode (*i.e.*, is not turned off or in sleep mode).

1 the Google Play Store is the most visible app store any user encounters and place any
 2 other app store at a significant disadvantage.

3 83. Absent this restraint, OEMs could pre-install and prominently
 4 display alternative app stores to the purchasers of some or all of their mobile devices,
 5 allowing competing app stores the ability to vie for prominent placement on Android
 6 devices, increased exposure to consumers and, as a result, increased ability to attract app
 7 developers to their store. As an app distributor, Epic could and would negotiate with
 8 OEMs to offer a prominently displayed app store containing *Fortnite* and other games,
 9 allowing Epic to reach more mobile users.

10 84. *Second*, Google interferes with OEMs' ability to distribute Android
 11 app stores and apps directly to consumers outside the Google Play Store. Some OEMs
 12 may choose to compete for buyers by offering mobile devices that provide easy access
 13 to additional mobile app stores and apps. For example, an OEM may pre-install an icon
 14 corresponding to an app store or app on the device before it is sold to consumers. Even
 15 when an OEM would want to make mobile apps available to consumers in this way,
 16 Google imposes unjustified and pretextual warnings about the security of installing the
 17 app, even though the consumer is choosing to install the app in full awareness of its
 18 source.

19 85. Epic recently reached an agreement with OnePlus, an OEM, to allow
 20 users of OnePlus mobile devices to seamlessly install *Fortnite* and other Epic games by
 21 touching an Epic Games app on their devices—without encountering any obstacles
 22 imposed by the Android OS. In conjunction with this agreement, Epic designed a
 23 version of *Fortnite* for certain OnePlus devices that delivers a state-of-the-art framerate
 24 (the frequency at which consecutive images appear on the device's screen), providing an
 25 even better gameplay experience for *Fortnite* players. Although the original agreement
 26 between Epic and OnePlus contemplated making this installation method available
 27 worldwide, Google demanded that OnePlus not implement its agreement with Epic with
 28 the limited exception of mobile devices sold in India. OnePlus informed Epic that

1 Google was “particularly concerned that the Epic Games app would have ability to
 2 potentially install and update multiple games with a silent install bypassing the Google
 3 Play Store”.⁹ Further, any waiver of Google’s restriction “would be rejected due to the
 4 Epic Games app serving as a potential portfolio of games and game updates”. As a
 5 result, OnePlus mobile device users in India can install Epic games seamlessly without
 6 using the Google Play Store, while users outside India cannot.

7 86. Another OEM, LG, also told Epic that it had a contract with Google
 8 “to block side downloading off Google Play Store this year”, but that the OEM could
 9 “surely” make Epic games available to consumers if the Google Play Store were used.
 10 Google prevented LG from pre-installing the Epic Games app on LG devices.

11 87. In the absence of this conduct, Epic could and would negotiate with
 12 OEMs to make *Fortnite* and other Epic games directly available to consumers, free from
 13 Google’s anti-competitive restraints. OEMs could then compete for the sale of mobile
 14 devices based in part on the set of apps offered on the OEMs’ devices. But Google
 15 forecloses alternative ways of distributing Android apps other than through its own
 16 monopolized app store, harming competition among OEMs and among app developers,
 17 to the detriment of consumers.

18 ii. Google’s Conduct Toward App Distributors and Developers

19 88. Google imposes anti-competitive restrictions on competing app
 20 distributors and developers that further entrench its monopoly in Android App
 21 Distribution.

22 89. *First*, Google prevents app distributors from providing Android users
 23 ready access to competing app stores. Specifically, even though competitive app stores
 24 themselves are mobile apps that could easily be distributed through the Google Play
 25 Store, Google prohibits the distribution of any competing app store through the Google
 26 Play Store, without any technological or other justification.

27 28 ⁹ A “silent install” is an installation process free of the dire security warnings that Google triggers
 when apps are directly downloaded, such as the “one touch” process on which Epic and OnePlus had
 agreed.

1 90. Google imposes this restraint through provisions of the Google Play
 2 Developer Distribution Agreement (“DDA”), which Google requires all app developers
 3 to sign before they can distribute their apps through the Google Play Store. Each of the
 4 Defendants, except Google Payment, is a party to the DDA.

5 91. Section 4.5 of the DDA provides that developers “may not use
 6 Google Play to distribute or make available any Product that has a purpose that
 7 facilitates the distribution of software applications and games for use on Android
 8 devices outside of Google Play.” The DDA further reserves to Google the right to
 9 remove and disable any Android app that it determines violates this requirement. The
 10 DDA is non-negotiable, and developers that seek access to Android users through the
 11 Google Play Store must accept Google’s standardized contract of adhesion.

12 92. In the absence of these unlawful restraints, competing app
 13 distributors could allow users to replace or supplement the Google Play Store on their
 14 devices with competing app stores, which users could easily download and install
 15 through the Google Play Store. App stores could compete and benefit consumers by
 16 offering lower prices and innovative app store models, such as app stores that are
 17 curated to specific consumers’ interests—*e.g.*, an app store that specializes in games or
 18 an app store that only offers apps that increase productivity. Without Google’s unlawful
 19 restraints, additional app stores would provide additional platforms on which more apps
 20 could be featured, and thereby, discovered by consumers. Epic has been damaged
 21 through its inability to provide a competing app store (as it does on personal computers)
 22 and by the loss of the opportunity to reach more Android users directly in the ways that
 23 personal computers allow developers to reach consumers without artificial constraints.

24 93. *Second*, Google conditions app developers’ ability to effectively
 25 advertise their apps to Android users on being listed in the Google Play Store.
 26 Specifically, Google markets an App Campaigns program that, as Google says, allows
 27 app developers to “get your app into the hands of more paying users” by “streamlin[ing]
 28 the process for you, making it easy to promote your apps across Google’s largest

1 properties”. This includes certain ad placements on Google Search, YouTube, Discover
 2 on Google Search, and the Google Display Network, and with Google’s “search
 3 partners”, that are specially optimized for the advertising of mobile apps. However, in
 4 order to access this valuable advertising space through the App Campaigns program,
 5 Google requires that app developers list their app in either the Google Play Store (to
 6 reach Android users) or in the Apple App Store (to reach Apple iOS users). This
 7 conduct further entrenches Google’s monopoly in Android App Distribution by
 8 coercing Android app developers to list their apps in the Google Play Store or risk
 9 losing access to a great many Android users they could otherwise advertise to but for
 10 Google’s restrictions.

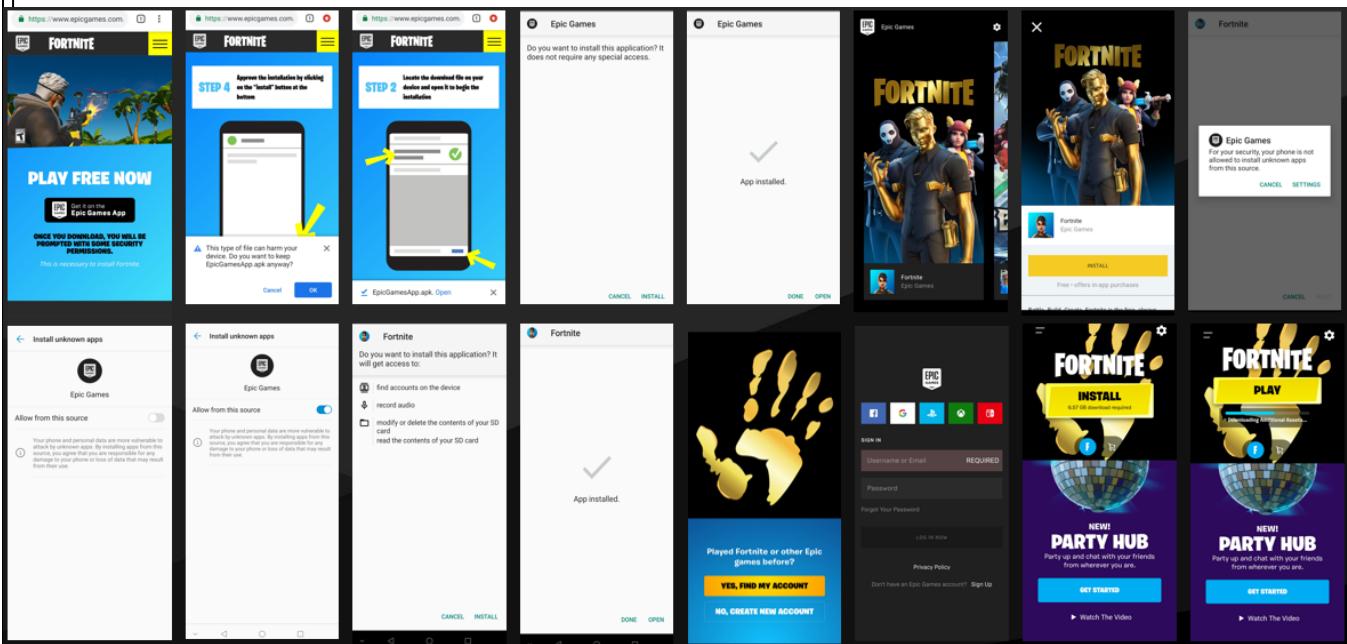
11 iii. Google’s Conduct Toward Consumers

12 94. Google directly and anti-competitively restricts the manner in which
 13 consumers can discover, download and install mobile apps and app stores. Although
 14 Google nominally allows consumers to directly download and install Android apps and
 15 app stores—a process that Google pejoratively describes as “sideloading”—Google has
 16 ensured, through a series of technological impediments imposed by the Android OS,
 17 that direct downloading remains untenable for most consumers.

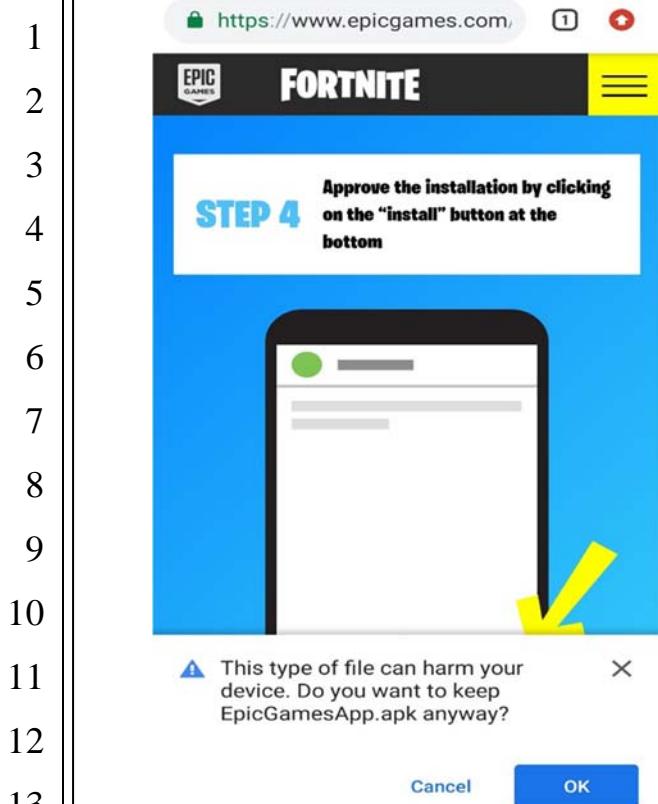
18 95. But for Google’s anticompetitive acts, Android users could freely
 19 download apps from developers’ websites, rather than through an app store, just as they
 20 might do on a personal computer. There is no reason that downloading and installing an
 21 app on a mobile device should differ from downloading and installing software on a
 22 personal computer. Millions of personal computer users download and install software
 23 directly every day, such as Google’s own Chrome browser or Adobe’s Acrobat Reader.
 24 Personal computer users do this easily and safely.

25 96. Direct downloading on Android mobile devices, however, differs
 26 dramatically. Google ensures that the Android process is technically complex,
 27 confusing and threatening, filled with dire warnings that scare most consumers into
 28 abandoning the lengthy process. For example, depending on the version of Android

1 running on a mobile device, downloading and installing *Fortnite* on an Android device
 2 could take as many as 16 steps or more, including requiring the user to make changes to
 3 the device's default settings and manually granting various permissions while being
 4 warned that doing so is dangerous. Below are the myriad steps an average Android user
 5 has to go through in order to download and install *Fortnite* directly from Epic's secure
 6 servers.



17 97. Below are two of the intimidating messages and warnings about the
 18 supposed danger of directly downloading and installing apps that consumers encounter
 19 during this process.
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98. As if this slog through warnings and threats were not enough to ensure the inferiority of direct downloading as a distribution method for Android apps, Google denies downloaded apps the permissions necessary to be seamlessly updated in the background—instead allows such updates only for apps downloaded via Google Play Store. The result is that consumers must manually approve every update of a “sideloaded” app. In addition, depending on the OS version and selected settings, such updates may require users to go through many of the steps in the downloading process repeatedly, again triggering many of the same warnings. This imposes onerous obstacles on consumers who wish to keep the most current version of an app on their mobile device and further drives consumers away from direct downloading and toward Google’s monopolized app store.

99. Further, under the guise of offering protection from malware, Google further restricts direct downloading. When Google deems an app “harmful”, Google may prevent the installation of, prompt a consumer to uninstall, or forcibly remove the

1 app from a consumer’s device. And direct downloading has been prevented entirely on
 2 the Android devices that are part of Google’s so-called Advanced Protection Program
 3 (“APP”). Consumers who have enrolled in APP are unable to directly download apps;
 4 their Android device can only download apps distributed in the Google Play Store or in
 5 another pre-installed app store that Google has pre-approved for an OEM to offer on its
 6 devices. App developers therefore cannot reach APP users unless they first agree to
 7 distribute their apps through the Google Play Store or through a separate Google-
 8 approved, OEM-offered app store, where available. Google’s invocation of security is
 9 an excuse to further strangle an app developer’s ability to reach Android users, as shown
 10 by a comparison to personal computers, where users can securely purchase and
 11 download new software without being limited to a single software store owned or
 12 approved by the user’s anti-virus software vendor.

13 100. Direct downloading is also nominally available to competing app
 14 distributors who seek to distribute competing Android app stores directly to consumers.
 15 However, the same restrictions Google imposes on the direct downloading of apps apply
 16 to the direct downloading of app stores. Indeed, Google Play Protect has flagged at
 17 least one competing Android app store, Aptoide, as “harmful”, further hindering
 18 consumers’ ability to access a competing app store.

19 101. And apps downloaded from “sideloaded” app stores, like apps
 20 directly downloaded from a developer’s website, may not be automatically uploaded in
 21 the background. Thus, direct downloading is not a viable way for app stores to reach
 22 Android users, any more than it is a viable alternative for single apps; the only
 23 difference is that the former do not have *any* alternative, ensuring the latter are forced
 24 into the Google Play Store.

25 102. But for Google’s restrictions on direct downloading, Epic and other
 26 app distributors and developers could try to directly distribute their stores and apps to
 27 those consumers who would be open to a process outside an established app store. But
 28 as explained above, Google makes direct downloading substantially and unnecessarily

1 difficult, and in some cases prevents it entirely, further narrowing this already narrow
 2 alternative distribution channel.

3 103. There is no legitimate reason for Google's conduct. Indeed, for
 4 decades the users of personal computers have been able to install software acquired
 5 from various sources without being deterred by anything like the obstacles erected by
 6 Google. Now, a user can navigate to the Internet webpage sponsored by the developer
 7 of software he/she desires, click once or twice to download and install an application,
 8 and be up and running, often in a matter of minutes. The operating systems used by
 9 personal computers efficiently facilitate this download and installation (unlike Android),
 10 and security screening is conducted by a neutral security software operating in the
 11 background, allowing users to download software from any source they choose (unlike
 12 Android).

13 104. Google's anti-competitive and unjustified restrictions on distributing
 14 apps through any means other than its own app store contradict its own claims that
 15 Android app developers can "us[e] any distribution approach or combination of
 16 approaches that meets your needs", and that developers can even provide consumers
 17 "apps from a website or [by] emailing them directly to users."¹⁰ In reality, Google
 18 specifically prevents app developers from effectively availing themselves of alternative
 19 distribution channels that it touts today.

20 105. Through these anti-competitive acts, including contractual provisions
 21 and exclusionary obstacles, Google has willfully obtained a near-absolute monopoly
 22 over Android mobile app distribution. Google Play Store downloads have accounted for
 23 more than 90% of downloads through Android app stores, dwarfing other available
 24 distribution channels.

25

26

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¹⁰ Google Play Developers Page, *Alternative distribution options*, <https://developer.android.com/distribute/marketing-tools/alternative-distribution> (last accessed June 7, 2020).

1 **D. Anti-Competitive Effects in the Android App Distribution Market**

2 106. Google's anti-competitive conduct forecloses competition in the
 3 Android App Distribution Market, affects a substantial volume of commerce in this
 4 Market and causes anti-competitive harms to OEMs, competing mobile app distributors,
 5 mobile app developers, and consumers.

6 107. Google's conduct harms OEMs by forcing them to dedicate to the
 7 Google Play Store and other mandatory Google applications valuable space on their
 8 devices' "home screen", even if they would rather use that real estate for other purposes,
 9 including to offer alternative app stores. Individually and together, these requirements
 10 limit OEMs' ability to innovate and compete with each other by offering innovative and
 11 more appealing (in terms of price and quality) distribution platforms for mobile apps.
 12 Google's restrictions also interfere with OEMs' ability to compete with each other by
 13 offering Android devices with tailored combinations of pre-installed apps that would
 14 appeal to particular subsets of mobile device consumers.

15 108. Google's conduct harms would-be competitor app distributors, such as
 16 Epic, which could otherwise innovate new models of app distribution and provide
 17 OEMs, app developers, and consumers choice beyond Google's own app store.

18 109. Google's anti-competitive conduct harms app developers, such as
 19 Epic, which are forced to agree to Google's anti-competitive terms and conditions if
 20 they wish to reach many Android users, such as through advertising on Google's
 21 valuable advertising properties. Google's restrictions prevent developers from
 22 experimenting with alternative app distribution models, such as providing apps directly
 23 to consumers, selling apps through curated app stores, creating their own competing app
 24 stores, or forming business relationships with OEMs who can pre-install apps. By
 25 restricting developers in such a way, Google ensures that the developer's apps will be
 26 distributed on the Google Play Store, and that Google is then able to monitor and collect
 27 a variety of information on the apps' usage, which it can then use to develop and offer
 28

1 its own competing apps that are, of course, not subject to Google's supra-competitive
 2 taxes.

3 110. Both developers and consumers are harmed by Google's supra-
 4 competitive taxes of 30% on the purchase price of apps distributed through the Google
 5 Play Store, which is a much higher transaction fee than would exist in a competitive
 6 market. Google's supra-competitive taxes raise prices for app developers and
 7 consumers and reduce the output of mobile apps and related content by depriving app
 8 developers incentive and capital to develop new apps and content.

9 111. Consumers are further harmed because Google's control of app
 10 distribution reduces developers' ability and incentive to distribute apps to consumers in
 11 different and innovative ways—for example, through genre-specific app stores. Google,
 12 by restraining the distribution market and eliminating the ability and incentive for
 13 competing app stores, also limits consumers' ability to discover new apps of interest to
 14 them. More competing app stores would permit additional platforms to feature diverse
 15 collections of apps. Instead, consumers are left to sift through millions of apps in one
 16 monopolized app store, where Google controls which apps are featured and which apps
 17 are identified or prioritized in user searches.

18 **III. Google Unlawfully Acquired and Maintains a Monopoly in the Android In- 19 App Payment Processing Market.**

20 112. By selling digital content within a mobile app rather than (or in
 21 addition to) charging a price for the app itself, app developers can make an app widely
 22 accessible to all users, then charge users for additional digital content or features, thus
 23 still generating revenue from their investment in developing new apps and content. This
 24 is especially true for mobile game developers. By allowing users to play without up-
 25 front costs, developers permit more players try a game "risk free" and only pay for what
 26 they want to access. *Fortnite*, for example, is free to download and play, but makes
 27 additional content available for in-app purchasing on an à la carte basis or via a
 28 subscription-based Battle Pass. App developers who sell digital content rely on in-app

1 payment processing tools to process consumers' purchases in a seamless and efficient
 2 manner.

3 113. When selling digital content, Android app developers are unable to
 4 utilize the multitude of electronic payment processing solutions generally available on
 5 the market to process other types of transactions. Instead, through contractual
 6 restrictions and its monopoly in app distribution, Google coerces developers into using
 7 its own in-app payment processing by conditioning developers' use of Google's
 8 dominant Google Play Store on the use of Google's payment processor, Google Play
 9 Billing, for digital content, thereby acquiring and maintaining monopoly power in the
 10 Android In-App Payment Processing Market. Google thus ties its Google Play Store to
 11 its own proprietary payment processing tool.

12 **A. The Android In-App Payment Processing Market**

13 i. Product Market Definition

14 114. There is a relevant antitrust market for the processing of payments
 15 for the purchase of digital content, including virtual gaming products, that is consumed
 16 within Android apps (the "Android In-App Payment Processing Market"). The Android
 17 In-App Payment Processing Market is comprised of the payment processing solutions
 18 that Android developers could turn to and integrate into their Android apps to process
 19 the purchase of such in-app digital content.

20 115. Absent Google's unlawful conduct, app developers could integrate
 21 compatible payment processor into their apps to facilitate the purchase of in-app digital
 22 content. Developers also would have the capability to develop their own in-app
 23 payment processing functionality. And developers could offer users a choice among
 24 multiple payment processors for each purchase, just like a website or brick-and-mortar
 25 store can offer a customer the option of using Visa, MasterCard, Amex, Google Pay,
 26 and more.

27 116. Google offers separate payment solutions for the purchase of digital
 28 content than it does for other types of purchases, even within mobile apps. Google Play

1 Billing can be used for the purchase of digital content and virtual gaming products,
 2 while Google offers a separate tool, Google Pay, to facilitate the purchase of physical
 3 products and services within apps.

4 117. It is particularly important that app developers who sell in-app digital
 5 content be able to offer in-app transactions that are seamless, engrossing, quick, and fun.
 6 For example, a gamer who encounters a desirable “skin” within *Fortnite*, such as a
 7 Marvel superhero, may purchase it nearly instantly for a small price without leaving the
 8 app. Although *Fortnite* does not offer content that extends gameplay or gives players
 9 competitive advantages, other game developers offer such products—for example,
 10 “boosts” and “extra lives”—that extend and enhance gameplay. It is critical that such
 11 purchases can be made during gameplay itself, rather than in another manner. If a
 12 player were required to purchase game-extending extra lives outside of the app, the
 13 player may simply stop playing instead.

14 118. As another example, if a user of a mobile dating app encounters a
 15 particularly desirable potential dating partner, he/she can do more than “swipe right” or
 16 “like” that person, but can also purchase a digital item that increases the likelihood that
 17 the potential partner will notice his/her profile. If the user could not make that purchase
 18 quickly and seamlessly, he/she would likely abandon the purchase and may even stop
 19 “swiping” in the app altogether.

20 119. It is therefore essential that developers who offer digital content be
 21 able to seamlessly integrate a payment processing solution into the app, rather than
 22 requiring a consumer to go elsewhere, such as to a separate website, to process a
 23 transaction. Indeed, if an app user were directed to process a purchase of digital content
 24 outside of a mobile app, the user might abandon the purchase or stop interacting with
 25 the mobile app altogether.

26 120. Mobile game developers particularly value the ability to allow users
 27 to make purchases that extend or enhance gameplay without disrupting or delaying that
 28 gameplay or a gamer’s engagement with the mobile app. For these reasons, and in the

1 alternative, there is a relevant antitrust sub-market for the processing of payments for
 2 the purchase of virtual gaming products within mobile Android games (the “Android
 3 Games Payment Processing Market”).

4 ii. Geographic Market Definition

5 121. The geographic scope of the Android In-App Payment Processing
 6 Market is worldwide, excluding China. Outside China, in-app payment processing
 7 tools, such as Google Play Billing, are available on a worldwide basis. By contrast, in-
 8 app payment processing tools available in China are not available outside of China,
 9 including because Google prevents the use of non-Google payment processing tools for
 10 all apps distributed through the Google Play Store, which as noted above dominates
 11 distribution of apps outside of China.

12 B. **Google’s Monopoly Power in the Android In-App Payment Processing
 13 Market**

14 122. Google has monopoly power in the Android In-App Payment
 15 Processing Market and, in the alternative, in the Android Games Payment Processing
 16 Market.

17 123. For apps distributed through the Google Play Store, Google requires
 18 that the apps use *only* its own in-app payment processor, Google Play Billing, to process
 19 in-app purchases of digital content and for all purchases within Android games. And
 20 because 90% or more of Android-compatible mobile app downloads conducted through
 21 an app stores have been done through the Google Play Store, Google has a monopoly in
 22 these Markets. .

23 124. Google charges a 30% commission for Google Play Billing. This
 24 rate reflects Google’s market power, which allows it to charge supra-competitive prices
 25 for payment processing within the market. Indeed, the cost of alternative electronic
 26 payment processing tools, which Google does not permit to be used for the purchase of
 27 in-app digital content or within Android games, can be *one tenth* of the 30% cost of
 28 Google Play Billing.

<u>Electronic Payment Processing Tool</u>	<u>Base U.S. Rate</u>
PayPal	2.9%
Stripe	2.9%
Square	2.6%-3.5%
Braintree	2.9%

C. Google's Anti-Competitive Conduct Concerning the Android In-App Payment Processing Market

125. Through provisions of the DDA that Google imposes on all developers who seek to access Android users, Google unlawfully ties its Google Play Store, through which it has a monopoly in the Android App Distribution Market, to its own in-app payment processing tool, Google Play Billing. Section 3.2 of the DDA requires that Android app developers enter into a separate agreement with Google's payment processor, Defendant Google Payment, in order to receive payment for apps and in-app digital content.

126. Further, Google's Developer Program Policies, compliance with which Section 4.1 of the DDA makes obligatory, require in relevant part that:

- Developers offering products within a game downloaded on Google Play or providing access to game content must use Google Play In-app Billing as the method of payment.
- Developers offering products within another category of app downloaded on Google Play must use Google Play In-app Billing as the method of payment, except for the following cases:
 - Payment is solely for physical products,
 - Payment is for digital content that may be consumed outside of the app itself (*e.g.*, songs that can be played on other music players).

127. Google's unlawful restraints in the DDA prevent app developers from integrating alternative, even multiple, payment processing solutions into their

1 mobile apps, depriving app developers and consumers alike a choice of competing
 2 payment processors. For example, Epic offers its own in-app payment processing tool
 3 that it could integrate, alongside Google's and others, into Epic mobile games. Epic
 4 consumers could then choose to process their payment using Google's tool, Epic's tool,
 5 or another tool altogether.

6 128. In December of 2019, Epic submitted a build of *Fortnite* to Google
 7 Play that enabled users to make in-app purchases through Epic's own payment
 8 processor. Upon review of the submission, Google Play rejected the application, citing
 9 its violation of Google's Payments policy as well as an unrelated issue raised by
 10 Google. In January 2020, Epic again submitted a *Fortnite* build that resolved the
 11 unrelated issue but again enabled users to use Epic's own payment processor. Google
 12 again rejected Epic's submission.

13 129. Epic was prevented from offering *Fortnite* on the Google Play Store,
 14 and therefore unable to reach many Android users, until it submitted a new version of
 15 *Fortnite* that only offered Google Play Billing. Google has damaged Epic by
 16 foreclosing it from the Android in-app payment processing market.

17 130. Google has no legitimate justifications for its tie. If it were
 18 concerned, for example, about the security of its users' payment information, then it
 19 would not permit alternative payment processing for certain transactions made on
 20 Android phones for physical products or digital content consumed outside an app. But
 21 Google does allow alternative payment processing tools in that context, with no
 22 diminution in security.

23 **D. Anti-Competitive Effects in the Android In-App Payment Processing
 24 Market**

25 131. Google's conduct harms competition in the Android In-app Payment
 26 Processing Market (and, in the alternative, in the Android Games Payment Processing
 27 Market) and injures app developers, consumers, and competing in-app payment
 28 processors.

1 132. Google's conduct harms would-be competitor in-app payment
 2 processors, who would otherwise have the ability to innovate and offer consumers
 3 alternative payment processing tools that offer better functionality, lower prices, and
 4 better security. For example, in the absence of Google's Developer Program Policies,
 5 Epic could offer consumers a choice of in-app payment processor for each purchase
 6 made by the consumer, including a choice of Epic's own payment processor at a lower
 7 cost and with better customer service.

8 133. Google also harms app developers and consumers by inserting itself
 9 as a mandatory middleman in every in-app transaction. When Google acts as payment
 10 processor, Epic is unable to provide users comprehensive customer service relating to
 11 in-app payments without Google's involvement. Google has little incentive to compete
 12 through improved customer service because Google faces no competition and
 13 consumers often blame Epic for payment-related problems. In addition, Google is able
 14 to obtain information concerning Epic's transactions with its own customers, which it
 15 could use to give its ads and Search businesses an anti-competitive edge, even when
 16 Epic and its own customers would prefer not to share their information with Google. In
 17 these ways and in others, Google directly harms app developers' relationships with the
 18 users of their apps.

19 134. Finally, Google raises app developers' costs and consumer prices
 20 through its supra-competitive 30% tax on in-app purchases, a price it could not maintain
 21 if it had not foreclosed competition for such transactions. The resulting increase in
 22 prices for in-app content likely deters some consumers from making purchases and
 23 deprives app developers of resources they could use to develop new apps and content.
 24 The supra-competitive tax rate also reduces developers' incentive to invest in and create
 25 additional apps and related in-app content.

1 **COUNT 1: Sherman Act § 2**
 2 **(Unlawful Monopoly Maintenance in the**
 3 **Android App Distribution Market)**
 4 **(against all Defendants except Google Payment)**

5 135. Epic restates, re-alleges, and incorporates by reference each of the
 6 allegations set forth in the rest of this Complaint as if fully set forth herein.

7 136. Google's conduct violates Section 2 of the Sherman Act, which
 8 prohibits the "monopoliz[ation of] any part of the trade or commerce among the several
 9 States, or with foreign nations". 15 U.S.C. § 2.

10 137. The Android App Distribution Market is a valid antitrust market.

11 138. Google holds monopoly power in the Android App Distribution
 12 Market.

13 139. Google has unlawfully maintained monopoly power in the Android
 14 App Distribution Market through the anti-competitive acts described herein, including
 15 conditioning the licensing of the Google Play Store, as well as other essential Google
 16 services and the Android trademark, on OEMs' agreement to provide the Google Play
 17 Store with preferential treatment, imposing technical restrictions and obstacles on both
 18 OEMs and developers, which prevent the distribution of Android apps through means
 19 other than the Google Play Store, and conditioning app developers' ability to effectively
 20 advertise their apps to Android users on being listed in the Google Play Store.

21 140. Google's conduct affects a substantial volume of interstate as well as
 22 foreign commerce.

23 141. Google's conduct has substantial anti-competitive effects, including
 24 increased prices and costs, reduced innovation and quality of service, and lowered
 25 output.

26 142. As a potential competing app distributor and as an app developer,
 27 Epic has been harmed by Defendants' anti-competitive conduct in a manner that the
 28 antitrust laws were intended to prevent. Epic has suffered and continues to suffer

1 damages and irreparable injury, and such damages and injury will not abate until an
 2 injunction ending Google's anti-competitive conduct issues.

3 **COUNT 2: Sherman Act § 1**

4 **(Unreasonable restraints of trade concerning**
Android App Distribution Market: OEMs)
(against all Defendants except Google Payment)

5
 6 143. Epic restates, re-alleges and incorporates by reference each of the
 7 allegations set forth in the rest of this Complaint as if fully set forth herein.

8 144. Defendants' conduct violates Section 1 of the Sherman Act, which
 9 prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy,
 10 in restraint of trade or commerce among the several States, or with foreign nations”.
 11 15 U.S.C. § 1.

12 145. Google has entered into agreements with OEMs that unreasonably
 13 restrict competition in the Android App Distribution Market. These include MADAs
 14 with OEMs that condition their access to the Google Play Store and other “must have”
 15 Google services on the OEM offering the Google Play Store as the primary and often
 16 the only viable app store on Android mobile devices.

17 146. These agreements serve no legitimate or pro-competitive purpose
 18 that could justify their anti-competitive effects, and thus unreasonably restrain
 19 competition in the Android App Distribution Market.

20 147. Google's conduct affects a substantial volume of interstate as well as
 21 foreign commerce.

22 148. Google's conduct has substantial anti-competitive effects, including
 23 increased prices and costs, reduced innovation and quality of service, and lowered
 24 output.

25 149. As a potential competing app distributor and as an app developer that
 26 consumes app distribution services, Epic has been harmed by Defendants' anti-
 27 competitive conduct in a manner that the antitrust laws were intended to prevent. Epic
 28 has suffered and continues to suffer damages and irreparable injury, and such damages

and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 3: Sherman Act § 1
(Unreasonable restraints of trade concerning
Android App Distribution Market: DDA)
(against all Defendants except Google Payment)

150. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

151. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations”.

15 U.S.C. § 1.

152. Google forces app developers to enter its standardized DDA, including Developer Program Policies integrated into that Agreement, as a condition of being distributed through Google's app store, the Google Play Store. The relevant provisions of these agreements unreasonably restrain competition in the Android App Distribution Market.

153. Section 4.5 of the DDA provides that developers “may not use Google Play to distribute or make available any Product that has a purpose that facilitates the distribution of software applications and games for use on Android devices outside of Google Play”. Section 4.1 of the DDA requires that all developers “adhere” to Google’s Developer Program Policies. Under the guise of its so-called “Malicious Behavior” Policy, Google prohibits developers from distributing apps that “download executable code [*i.e.*, code that would execute an app] from a source other than Google Play”. The DDA further reserves to Google the right to remove and disable any Android app that it determines violates either the DDA or its Developer Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These provisions prevent app developers from offering competing app stores through the

Google Play Store, even though there is no legitimate technological or other impediment to distributing a competing app store through the Google Play Store.

154. These agreements serve no legitimate or pro-competitive purpose that could justify their anti-competitive effects, and thus unreasonably restrain competition in the Android App Distribution Market.

155. Google's conduct affects a substantial volume of interstate as well as foreign commerce.

156. Google's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

157. As a potential competing app distributor and as an app developer that consumes app distribution services, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 4: Sherman Act § 2
(Unlawful Monopolization and Monopoly Maintenance in the
Android In-App Payment Processing Market)
(against all Defendants)

158. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

159. Google's conduct violates Section 2 of the Sherman Act, which prohibits the "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign nations". 15 U.S.C. § 2.

160. The Android In-App Payment Processing Market is a valid antitrust market. In the alternative, the Android Games Payment Processing Market is a valid antitrust market.

161. Google holds monopoly power in the Android In-App Payment Processing Market and, in the alternative, in the Android Games Payment Processing Market.

162. Google has unlawfully acquired monopoly power in these Markets, including through the anti-competitive acts described herein. And however Google initially acquired its monopoly, it has unlawfully maintained its monopoly, including through the anti-competitive acts described herein.

163. Google's conduct affects a substantial volume of interstate as well as foreign commerce.

164. Google's conduct has substantial anti-competitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output.

165. As an app developer and as the developer of a competing in-app payment processing tool, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 5: Sherman Act § 1
(Unreasonable restraints of trade concerning
Android In-App Payment Processing Market)
(against all Defendants)

166. Epic restates, re-alleges, and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

167. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations”. 15 U.S.C. § 1.

168. Google, except Google Payment, forces app developers to enter its standardized DDA, including Developer Program Policies integrated into that

1 Agreement, as a condition of having their apps distributed through Google's
 2 monopolized app store, Google Play Store. The relevant provisions of these agreements
 3 unreasonably restrain competition in the Android In-App Payment Processing Market.

4 169. Section 3.2 of the DDA requires that Android app developers enter
 5 into a separate agreement with Google's payment processor, Defendant Google
 6 Payment, in order to receive payment for apps and content distributed through the
 7 Google Play Store. This includes payments related to in-app purchases of digital
 8 content. Further, Google's Developer Program Policies, compliance with which Section
 9 4.1 of the DDA makes obligatory, require that apps distributed through the Google Play
 10 Store "must use Google Play In-app Billing [offered by Google Payment] as the method
 11 of payment" for such in-app purchases. While Google's Policies exclude certain types
 12 of transactions from this requirement, such as the purchase of "solely physical products"
 13 or of "digital content that may be consumed outside of the app itself", Google expressly
 14 applies its anti-competitive mandate to every "game downloaded on Google Play" and
 15 to all purchased "game content", such as purchases made within *Fortnite*.

16 170. The challenged provisions serve no sufficient legitimate or pro-
 17 competitive purpose and unreasonably restrain competition in the Android In-App
 18 Payment Processing Market and, in the alternative, the Android Games Payment
 19 Processing Market.

20 171. Defendants' conduct affects a substantial volume of interstate as well
 21 as foreign commerce.

22 172. Defendants' conduct has substantial anti-competitive effects,
 23 including increased prices and costs, reduced innovation and quality of service, and
 24 lowered output.

25 173. As an app developer and as the developer of a competing in-app
 26 payment processing tool, Epic has been harmed by Defendants' anti-competitive
 27 conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered
 28

and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 6: Sherman Act § 1
(Tying Google Play Store to Google Play Billing)
(against all Defendants)

174. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

175. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.”

15 U.S.C. § 1.

176. Google has unlawfully tied the Google Play Store to its in-app payment processor, Google Play Billing, through its DDAs with app developers and its Developer Program Policies.

177. Google has sufficient economic power in the tying market, the Android App Distribution Market. With Google Play Store installed on nearly all Android OS devices and over 90% of downloads on Android OS devices being performed by the Google Play Store, Google has overwhelming market power. Google's market power is further evidenced by its ability to extract supra-competitive taxes on the sale of apps through the Google Play Store.

178. The availability of the Google Play Store for app distribution is conditioned on the app developer accepting a second product, Google's in-app payment processing services. Google's foreclosure of alternative app distribution channels forces developers like Epic to use Google's in-app payment processing services, which Google has expressly made a condition of reaching Android users through its dominant Google Play Store.

179. The tying product, Android app distribution, is distinct from the tied product, Android in-app payment processing, because app developers such as Epic have alternative in-app payment processing options and would prefer to choose among them

independently of how an Android app is distributed. Google's unlawful tying arrangement thus ties two separate products that are in separate markets.

180. Google's conduct forecloses competition in the Android In-App Payment Processing Market, and, in the alternative, in the Android Games Payment Processing Market, affecting a substantial volume of commerce in these Markets.

181. Google has thus engaged in a *per se* illegal tying arrangement and the Court does not need to engage in a detailed assessment of the anti-competitive effects of Google's conduct or its purported justifications.

182. In the alternative only, even if Google’s conduct does not constitute a *per se* illegal tie, a detailed analysis of Google’s tying arrangement would demonstrate that this arrangement violates the rule of reason and is illegal.

183. As an app developer which consumes in-app payment processing services and as the developer of a competing in-app payment processing tool, Epic has been harmed by Defendants' anti-competitive conduct in a manner that the antitrust laws were intended to prevent. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 7: California Cartwright Act
(Unreasonable restraints of trade in Android App Distribution Market)
(against all Defendants except Google Payment)

184. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

185. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce or to prevent market competition. See §§ 16720, 16726.

186. Under the Cartwright Act, a “combination” is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

1 187. The Android App Distribution Market is a valid antitrust market.

2 188. Google has executed agreements with OEMs that unreasonably
 3 restrict competition in the Android App Distribution Market. Namely, Google has
 4 entered into MADAs with OEMs that require OEMs to offer the Google Play Store as
 5 the primary—and practically the only—app store on Android mobile devices. These
 6 agreements further prevent OEMs from offering alternative app stores on Android
 7 mobile devices in any prominent visual positioning.

8 189. Google's conduct and practices have substantial anti-competitive
 9 effects, including increased prices and costs, reduced innovation, poorer quality of
 10 customer service and lowered output.

11 190. Google's conduct harms Epic which, as a direct result of Google's
 12 anti-competitive conduct, has been unreasonably restricted in its ability to distribute its
 13 Android applications, including *Fortnite*, and to market a competing app store to the
 14 Google Play Store.

15 191. It is appropriate to bring this action under the Cartwright Act
 16 because many of the illegal agreements were made in California and purport to be
 17 governed by California law, many affected consumers reside in California, Google has
 18 its principal place of business in California and overt acts in furtherance of Google's
 19 anti-competitive scheme took place in California.

20 192. Epic has suffered and continues to suffer damages and irreparable
 21 injury, and such damages and injury will not abate until an injunction ending Google's
 22 anti-competitive conduct issues.

23 **COUNT 8: California Cartwright Act**
 24 **(Unreasonable restraints of trade in Android App Distribution Market)**
 25 **(against all Defendants except Google Payment)**

26 193. Epic restates, re-alleges and incorporates by reference each of the
 27 allegations set forth in the rest of this Complaint as if fully set forth herein.

28 194. Google's acts and practices detailed above violate the Cartwright
 Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the

1 combination of resources by two or more persons to restrain trade or commerce or to
 2 prevent market competition. *See* §§ 16720, 16726.

3 195. Under the Cartwright Act, a “combination” is formed when the anti-
 4 competitive conduct of a single firm coerces other market participants to involuntarily
 5 adhere to the anti-competitive scheme.

6 196. The Android App Distribution Market is a valid antitrust market.

7 197. Google conditions distribution through the Google Play Store on
 8 entering into the standardized DDA described above, including the Developer Program
 9 Policies integrated therein. Through certain provisions in these agreements, Google
 10 forces app developers to submit to conditions that unreasonably restrain competition in
 11 the Android App Distribution Market.

12 198. Section 4.5 of the DDA provides that developers “may not use
 13 Google Play to distribute or make available any Product that has a purpose that
 14 facilitates the distribution of software applications and games for use on Android
 15 devices outside of Google Play.” Section 4.1 of the DDA requires that all developers
 16 “adhere” to Google’s Developer Program Policies. Under the guise of its so-called
 17 “Malicious Behavior” Policy, Google prohibits developers from distributing apps that
 18 “download executable code [*i.e.*, code that would execute an app] from a source other
 19 than Google Play.” The DDA further reserves to Google the right to remove and
 20 disable any Android app that it determines violates either the DDA or its Developer
 21 Program Policies and to terminate the DDA on these bases. (§§ 8.3, 10.3.) These
 22 provisions prevent app developers from offering competing app stores through the
 23 Google Play Store, even though there is no legitimate technological or other impediment
 24 to distributing a competing app store through the Google Play Store.

25 199. These provisions have no legitimate or pro-competitive purpose or
 26 effect, and unreasonably restrain competition in the Android App Distribution Market.
 27
 28

1 200. Google's conduct and practices have substantial anti-competitive
 2 effects, including increased prices and costs, reduced innovation, poorer quality of
 3 customer service, and lowered output.

4 201. Google's conduct harms Epic which, as a direct result of Google's
 5 anti-competitive conduct, has been unreasonably restricted in its ability to distribute its
 6 Android applications, including *Fortnite*, and to market a competing app store to the
 7 Google Play Store.

8 202. It is appropriate to bring this action under the Cartwright Act
 9 because many of the illegal agreements were made in California and purport to be
 10 governed by California law, many affected consumers reside in California, Google has
 11 its principal place of business in California, and overt acts in furtherance of Google's
 12 anti-competitive scheme took place in California.

13 203. Epic has suffered and continues to suffer damages and irreparable
 14 injury, and such damages and injury will not abate until an injunction ending Google's
 15 anti-competitive conduct issues.

16 **COUNT 9: California Cartwright Act**
(Unreasonable restraints of trade in Android In-App Payment Processing Market)
(against all Defendants)

17 204. Epic restates, re-alleges and incorporates by reference each of the
 18 allegations set forth in the rest of this Complaint as if fully set forth herein.

20 205. Google's acts and practices detailed above violate the Cartwright
 21 Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the
 22 combination of resources by two or more persons to restrain trade or commerce or to
 23 prevent market competition. *See* §§ 16720, 16726.

24 206. Under the Cartwright Act, a "combination" is formed when the anti-
 25 competitive conduct of a single firm coerces other market participants to involuntarily
 26 adhere to the anti-competitive scheme.

1 207. The Android App Distribution Market and Android In-App Payment
 2 Processing Market, and, in the alternative, the Android Games Payment Processing
 3 Market, are valid antitrust markets.

4 208. Google has monopoly power in the Android In-App Payment
 5 Processing Market and, in the alternative, in the Android Games Payment Processing
 6 Market.

7 209. Google conditions distribution through the Google Play Store on
 8 entering into the standardized DDA described above, including the Developer Program
 9 Policies integrated therein. Through certain provisions in these agreements, Google
 10 forces app developers to submit to conditions that unreasonably restrain competition in
 11 the Android In-App Payment Processing Market.

12 210. Section 3.2 of the DDA requires that Android app developers enter
 13 into a separate agreement with Google's payment processor, Defendant Google
 14 Payment, in order to receive payment for apps and content distributed through the
 15 Google Play Store. This includes payments related to in-app purchases. Further,
 16 Google's Developer Program Policies, compliance with which Section 4.1 of the DDA
 17 makes obligatory, require that apps distributed through the Google Play Store "must use
 18 Google Play In-app Billing [offered by Google Payment] as the method of payment" for
 19 in-app purchases. While Google's Policies exclude certain types of transactions from
 20 this requirement, such as the purchase of "solely physical products" or of "digital
 21 content that may be consumed outside of the app itself", Google expressly and
 22 discriminatorily applies its anti-competitive mandate to every "game downloaded on
 23 Google Play" and to all purchased "game content", such as purchases made within
 24 *Fortnite*.

25 211. These provisions have no legitimate or pro-competitive purpose or
 26 effect, and unreasonably restrain competition in the Android In-App Payment
 27 Processing Market, and, in the alternative, in the Android Games Payment Processing
 28 Market.

212. Google's conduct and practices have substantial anti-competitive effects, including increased prices and costs, reduced innovation, poorer quality of customer service and lowered output.

213. Google's conduct harms Epic which, as a direct result of Google's anti-competitive conduct, has been unreasonably restricted in its ability to distribute and use its own in-app payment processor.

214. It is appropriate to bring this action under the Cartwright Act because many of the illegal agreements were made in California and purport to be governed by California law, many affected consumers reside in California, Google has its principal place of business in California and overt acts in furtherance of Google's anti-competitive scheme took place in California.

215. Epic has suffered and continues to suffer damages and irreparable injury, and such damages and injury will not abate until an injunction ending Google's anti-competitive conduct issues.

COUNT 10: California Cartwright Act
(Tying Google Play Store to Google Play Billing)
(against all Defendants)

216. Epic restates, re-alleges and incorporates by reference each of the allegations set forth in the rest of this Complaint as if fully set forth herein.

217. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. & Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to restrain trade or commerce, or to prevent market competition. See §§ 16720, 16726.

218. Under the Cartwright Act, a “combination” is formed when the anti-competitive conduct of a single firm coerces other market participants to involuntarily adhere to the anti-competitive scheme.

219. The Cartwright Act also makes it "unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the State, or to fix a price charged therefor, or discount

1 from, or rebate upon, such price, on the condition, agreement or understanding that the
 2 lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery,
 3 supplies, commodities, or services of a competitor or competitors of the lessor or seller,
 4 where the effect of such lease, sale, or contract for sale or such condition, agreement or
 5 understanding may be to substantially lessen competition or tend to create a monopoly
 6 in any line of trade or commerce in any section of the State.” § 16727.

7 220. As detailed above, Google has unlawfully tied its in-app payment
 8 processor, Google Play Billing, to the Google Play Store through its DDAs with app
 9 developers and its Developer Program Policies.

10 221. Google has sufficient economic power in the tying market, the
 11 Android App Distribution Market, to affect competition in the tied market, the Android
 12 In-App Payment Distribution Market. With Google Play Store installed on nearly all
 13 Android OS devices and over 90% of downloads on Android OS devices being
 14 performed by the Google Play Store, Google has overwhelming market power.
 15 Google’s market power is further evidenced by its ability to extract supra-competitive
 16 taxes on the sale of apps through the Google Play Store.

17 222. The availability of the Google Play Store for app distribution is
 18 conditioned on the app developer accepting a second product, Google’s in-app payment
 19 processing services. Google’s foreclosure of alternative app distribution channels forces
 20 developers like Epic to use Google’s in-app payment processing services, which Google
 21 has expressly made a condition of reaching Android users through its dominant Google
 22 Play Store.

23 223. The tying product, Android app distribution, is separate and distinct
 24 from the tied product, Android in-app payment processing, because app developers such
 25 as Epic have alternative in-app payment processing options and would prefer to choose
 26 among them independently of how an Android app is distributed. Google’s unlawful
 27 tying arrangement thus ties two separate products that are in separate markets.

1 224. Google's conduct forecloses competition in the Android In-App
 2 Payment Processing Market and, in the alternative, in the Android Games Payment
 3 Processing Market, affecting a substantial volume of commerce in these Markets.

4 225. Google has thus engaged in a *per se* illegal tying arrangement and
 5 the Court does not need to engage in a detailed assessment of the anti-competitive
 6 effects of Google's conduct or its purported justifications.

7 226. Even if Google's conduct does not form a *per se* illegal tie, an
 8 assessment of the tying arrangement would demonstrate that it is unreasonable under the
 9 Cartwright Act, and therefore, illegal.

10 227. Google's acts and practices detailed above unreasonably restrain
 11 competition in the Android In-App Payment Processing Market and, in the alternative,
 12 in the Android Games Payment Processing Market.

13 228. Google's conduct harms Epic which, as a direct result of Google's
 14 anti-competitive conduct, is paying a supra-competitive commission rate on in-app
 15 purchases processed through Google's payment processor and has forgone commission
 16 revenue it would be able to generate if its own in-app payment processor were not
 17 unreasonably restricted from the market.

18 229. As an app developer which consumes in-app payment processing
 19 services and as the developer of a competing in-app payment processing tool, Epic has
 20 been harmed by Defendants' anti-competitive conduct in a manner that the antitrust
 21 laws were intended to prevent.

22 230. It is appropriate to bring this action under the Cartwright Act
 23 because many of the illegal agreements were made in California and purport to be
 24 governed by California law, many affected consumers reside in California, Google has
 25 its principal place of business in California, and overt acts in furtherance of Google's
 26 anti-competitive scheme took place in California.

1 231. Epic has suffered and continues to suffer damages and irreparable
 2 injury, and such damages and injury will not abate until an injunction ending Google's
 3 anti-competitive conduct issues.

4 **COUNT 11: California Unfair Competition Law**
 5 **(against all Defendants)**

6 232. Epic restates, re-alleges and incorporates by reference each of the
 7 allegations set forth in the rest of this Complaint as if fully set forth herein.

8 233. Google's conduct, as described above, violates California's Unfair
 9 Competition Law, Cal. Bus. & Prof. Code §§ 17200, *et seq.*, which prohibits any
 10 unlawful, unfair or fraudulent business act or practice.

11 234. Epic has standing to bring this claim because it has suffered injury in
 12 fact and lost money as a result of Google's unfair competition. Specifically, it develops
 13 and distributes apps for the Android mobile platform, and has developed and distributes
 14 a processor for in-app purchases, and Google's conduct has unreasonably restricted
 15 Epic's ability to fairly compete in the relevant markets with these products.

16 235. Google's conduct violates the Sherman Act and the Cartwright Act,
 17 and thus constitutes unlawful conduct under § 17200.

18 236. Google's conduct is also "unfair" within the meaning of the Unfair
 19 Competition Law.

20 237. Google's conduct harms Epic which, as a direct result of Google's
 21 anti-competitive conduct, is unreasonably prevented from freely distributing mobile
 22 apps or its in-app payment processing tool, and forfeits a higher commission rate on the
 23 in-app purchases than it would pay absent Google's conduct.

24 238. Epic seeks injunctive relief under the Unfair Competition Law.
 25
 26
 27
 28

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Epic and against Defendants:

- A. Issuing an injunction prohibiting Google's anti-competitive and unfair conduct and mandating that Google take all necessary steps to cease such conduct and to restore competition;
- B. Awarding a declaration that the contractual restraints complained of herein are unlawful and unenforceable;
- C. Awarding any other equitable relief necessary to prevent and remedy Google's anti-competitive conduct; and
- D. Granting such other and further relief as the Court deems just and proper.

1 Dated: August 13, 2020

2 Respectfully submitted,

3
4 By: /s/ Paul J. Riehle
5

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

MARY CARR, individually and on behalf of all
others similarly situated;

Plaintiffs,

vs.
GOOGLE LLC; GOOGLE IRELAND
LIMITED; GOOGLE COMMERCE
LIMITED; GOOGLE ASIA PACIFIC
PTE. LIMITED; and GOOGLE
PAYMENT CORP.;

Defendants.

CASE NO. 5:20-CV-5761

**COMPLAINT
(CLASS ACTION)**

JURY TRIAL DEMANDED

1 Plaintiff Mary Carr, on behalf of herself and all others similarly situated, brings this class
2 action against Defendants Google LLC; Google Ireland Ltd.; Google Commerce Ltd.; Google
3 Asia Pacific Pte. Ltd; and Google Payment Corp. (collectively, “Google”), and alleges as follows:

4 **INTRODUCTION**

5 1. Consumers and businesses worldwide rely on smart mobile devices such as
6 smartphones and tablets for work, news, entertainment and communication. These devices are
7 enhanced through software products known as mobile applications or “apps.” Apps allow a user to
8 personalize their device to meet their specific needs and interests. Consequently, a mobile device
9 that provides seamless access to and use of a wide variety of apps is valuable to consumers across
10 the globe.

11 2. Like personal computers, smart mobile devices use an operating system or “OS” to
12 provide core device functionality and enable the operation of compatible apps. The commercial
13 viability of an OS for mobile devices (a “mobile OS”) depends in large part on the availability,
14 number, and variety of compatible apps that cater to the preferences and needs of users.

15 3. Google controls the most pervasive mobile OS: the Android OS. Android OS is used
16 by billions of users around the world, and boasts nearly 3 million compatible apps. For companies
17 that design and sell smart mobile devices, known as original equipment manufacturers (“OEMs”),
18 Android is the only commercially viable OS that is widely available to license. Stated simply, OEMs
19 have a single mobile OS option: Google’s Android OS. Consequently, Google enjoys monopoly
20 power over the market for mobile OS that are available for license by OEMs.

21 4. Google is not, however, satisfied with its control of the market for Android OS. To
22 further strengthen its monopoly power, Google erected contractual and technological barriers that
23 foreclose Android users’ ability to utilize app distribution platforms other than Google Play Store.
24 This ensures that the Google Play Store accounts for nearly all the app downloads from app stores

1 on Android devices. Google thus maintains a monopoly over the market for distributing mobile apps
2 to Android users (hereafter, the “Android App Distribution Market”).

3 5. For example, Google bundles the Google Play Store with other Google services that
4 Android OEMs must provide on their devices (such as Gmail, Google Search, Google Maps, and
5 YouTube). Then, as a condition to license those services, Google requires an OEM to pre-install
6 the Google Play Store and prominently display it, while at the same time interfering with an OEM’s
7 ability to make third-party app stores or apps available on their devices. These restrictions
8 effectively foreclose competing app stores—and even single apps—from a primary distribution
9 channel.

10 6. But the OEMs are not Google’s only avenue of implementing its anticompetitive
11 scheme. Google also enforces anticompetitive restrictions against app developers. Specifically,
12 Google contractually prohibits app developers from offering an app through the Google Play Store
13 that is, in turn, used to download other apps. Additionally, Google forces app developers to distribute
14 their apps through the Google Play Store to take advantage of advertising channels controlled by
15 Google, such as ad placements on Google Search or YouTube that are specially optimized to
16 advertise mobile apps. Because Google also has a monopoly in internet searches, app developers
17 have no choice but to acquiesce to Google’s anticompetitive restrictions on Google Play.

18 7. Finally, Google stifles or blocks consumers’ ability to download alternative app
19 stores and apps directly from developers’ websites. Downloading apps on an Android device outside
20 of Google Play requires multiple steps that require the user to, among other things, change default
21 settings and click through multiple warnings. Even if a user runs this gauntlet and manages to install
22 a competing app store, Google protects the Play Store’s competitive advantage by blocking the
23 alternative store from offering basic functions, such as automatic “background” updates of the kind
24 seamlessly available for apps downloaded from the Google Play Store.

1 8. Through its behavior, Google intends to eliminate consumer choice, foreclosing
2 competition in mobile app distribution. There is no legitimate procompetitive justification for
3 Google's conduct and restrictions.

4 9. Google also imposes anticompetitive restrictions in the separate market for Android
5 In-app Payment Processing. App developers frequently sell digital content for consumption within
6 an app itself (also known as an "in-app purchase"). These in-app purchases require seamless payment
7 processing tools. An app developer may create its own payment mechanism or utilize a payment
8 processing tool offered by third parties.

9 10. Google, however, conditions the right to distribute an app through Google Play Store
10 on a developer's agreement to exclusively use Google's own payment processing tool, Google Play
11 Billing, to process in-app purchases. App developers cannot even offer users other payment
12 processing options alongside Google Play Billing. This essentially forces app developers to use both
13 Google Play Store and Google Play Billing because Google's monopoly over the Android App
14 Distribution Market means developers cannot circumvent this anticompetitive tie by distributing
15 their content through a channel other than the Google Play Store.

16 11. Google's decision to tie app distribution to in-app purchase billing means that for
17 every in-app purchase, just as for the initial app purchase, it is Google, not the app developer, that
18 first collects payment. Google then taxes the transaction at an exorbitant 30% supra-competitive
19 rate, remitting the remaining 70% to the developer. This 30% commission is up to ten times higher
20 than the toll charged by other electronic payment options.

21 12. Further, by interposing itself as an intermediary in every digital content purchase
22 conducted within an Android-distributed app, Google is able to collect user's personal information,
23 which Google then uses to give an anticompetitive edge to its own advertising services and mobile
24 app development business.

1 13. But for Google’s monopolistic conduct, competitors could offer consumers and
2 developers choice in distribution and payment processing. Entities wishing to distribute apps
3 through a competing store could offer developers greater innovation and enhanced choices,
4 including in-app payment processing. With other viable options, app developers would not have to
5 pay Google’s supra-competitive tax of 30%. Rather, the price of distribution and payment
6 processing alike would be set by market forces. Further, users and developers—not Google—would
7 decide how (or even whether) user data was used for other purposes.

PARTIES

9 14. Plaintiff Mary Carr is a natural person who resides in the State of Illinois
10 ("Plaintiff"). Plaintiff purchased an app through the Google Play store and also purchased in-app
11 digital content through an app purchased from the Google Play store within the last four years.

12 15. Defendant Google LLC is a Delaware limited liability company with its principal
13 place of business in Mountain View, California. Google LLC is the primary operating subsidiary of
14 the publicly traded holding company Alphabet Inc. The sole member of Google LLC is XXVI
15 Holdings, Inc., a Delaware corporation with its principal place of business in Mountain View,
16 California. Google LLC contracts with all app developers that distribute their apps through the
17 Google Play Store and is therefore a party to the anticompetitive contractual restrictions at issue in
18 this suit.

16. Defendant Google Ireland Limited (“Google Ireland”) is a limited company
organized under the laws of Ireland with its principal place of business in Dublin, Ireland, and is a
subsidiary of Google LLC. Google Ireland contracts with all app developers that distribute their
apps through the Google Play Store and is therefore a party to the anticompetitive contractual
restrictions at issue in this suit.

1 17. Defendant Google Commerce Limited (“Google Commerce”) is a limited company
2 organized under the laws of Ireland with its principal place of business in Dublin, Ireland, and is a
3 subsidiary of Google LLC. Google Commerce contracts with all app developers that distribute their
4 apps through the Google Play Store and is therefore a party to the anticompetitive contractual
5 restrictions at issue in this suit.

6 18. Defendant Google Asia Pacific Pte. Limited (“Google Asia Pacific”) is a private
7 limited company organized under the laws of Singapore with its principal place of business in
8 Mapletree Business City, Singapore, and is a subsidiary of Google LLC. Google Asia Pacific
9 contracts with all app developers that distribute their apps through the Google Play Store and is
10 therefore a party to the anticompetitive contractual restrictions at issue in this suit.

11 19. Defendant Google Payment Corp. (“Google Payment”) is a Delaware corporation
12 with its principal place of business in Mountain View, California, and is a subsidiary of Google
13 LLC. Google Payment provides in-app payment processing services to Android app developers and
14 Android users and collects a 30% commission on many types of processed payments, including
15 payments for apps sold through the Google Play Store and in-app purchases made within such apps.

JURISDICTION & VENUE

17 20. This Court has subject-matter jurisdiction over Plaintiff's federal antitrust claims
18 pursuant to the Clayton Antitrust Act, 15 U.S.C. § 26, and 28 U.S.C. §§ 1331 and 1337. The Court
19 has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1337.

20 21. This Court has personal jurisdiction over the Defendants. Google LLC and Google
21 Payment are headquartered in this District. All Defendants have engaged in sufficient minimum
22 contacts with the United States and have purposefully availed themselves of the benefits and
23 protections of United States and California law, such that the exercise of jurisdiction over them

1 would comport with due process requirements. Further, the Defendants have consented to the
2 exercise of personal jurisdiction by this Court.

3 22. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Google LLC
4 and Google Payment maintain their principal places of business in the State of California and in this
5 District, because a substantial part of the events or omissions giving rise to Plaintiff's claims
6 occurred in this District, and because, pursuant to 28 U.S.C. § 1391(c)(3), any Defendants not
7 resident in the United States may be sued in any judicial district and their joinder with others shall
8 be disregarded in determining proper venue. In the alternative, personal jurisdiction and venue also
9 may be deemed proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because
10 Defendants may be found in or transact business in this District.

FACTUAL ALLEGATIONS

I. GOOGLE DOMINATES THE MERCHANT MARKET FOR MOBILE OPERATING SYSTEMS.

A. The Merchant Market For Mobile Operating Systems.

15 23. Smart mobile devices such as smartphones and tablets are handheld, portable
16 electronic devices that can connect wirelessly to the internet and perform multi-purpose computing
17 functions, including, among other things, Internet browsing, using social media, streaming video,
18 listening to music, or playing games. Many consumers own only a smart mobile device and no other
19 computer. Such consumers are particularly hard-hit by Google's unlawful conduct in mobile-related
20 markets.

21 24. Mobile devices require an OS that enables multi-purpose computing functionality,
22 including, but not limited to: (1) button, touch, and motion commands; (2) a “graphical user
23 interface” made up of icons indicating actions a user may take; (3) basic operations such as cellular
24 or WiFi connectivity, GPS positioning, camera and video recording, and speech recognition; and
25 (4) the installation and operation of compatible mobile apps.

1 25. An OEM must pre-install an OS on each device prior to its sale so that purchasers
2 immediately have access to basic functions like the ones described above. OEMs design mobile
3 devices to ensure compatibility with whatever OS was selected for that device. For OEMs, the
4 process of implementing a mobile OS requires significant time and investment, making switching
5 to another mobile OS difficult, expensive, and time-consuming.

6 26. The vast majority of OEMs do not develop their own OS, so they must choose and
7 license an OS for their devices. There is therefore a relevant Merchant Market for Mobile OS that
8 is comprised of mobile OS that OEMs can license for their smart mobile devices.¹ Historically, the
9 Merchant Market for Mobile OS included the Android OS, developed by Google, the Tizen mobile
10 OS, a partially open-source mobile OS that was developed by the Linux Foundation and Samsung,
11 and the Windows Phone OS developed by Microsoft.

12 27. OEMs license mobile OSs for installation on mobile devices globally, excluding
13 China.² The geographic scope of the relevant Merchant Market for Mobile OSs is therefore
14 worldwide, excluding China. Notably, OEMs outside of China must all contractually consent that
15 if their device licenses the Android OS that they will not sell devices preloaded with a competing,
16 Android-compatible mobile OS.

17 28. The geographic scope of the Merchant Market for Mobile OSs includes a separate
18 market within the United States. The U.S. Merchant Market for Mobile OSs operates as described
19 throughout this Complaint.

¹ The market does not include: (1) proprietary OSs that are not available for licensing, such as Apple's mobile OS, called iOS; (2) mobile devices that lack the multi-computing functions of smart mobile devices and tablets (*i.e.*, "flip phones"); or (3) electronic devices whose OS are not compatible with mobile device OS (*i.e.*, desktop computers or gaming systems like Xbox).

² Google's operations in China are limited for legal and regulatory reasons, and Google does not make available many of its products for mobile devices sold within China. Further, while Google contractually requires OEMs licensing Android outside of China not to sell devices with competing Android-compatible mobile OSs, it imposes no such restriction on devices sold within China.

1 **B. Google's Monopoly Power In The Merchant Market For Mobile Operating
2 Systems.**

3 29. Google enjoys monopoly power in the Merchant Market for Mobile OS through its
4 Android OS. For instance, the European Commission determined the Android OS, licensed to OEMs
5 in relevant respects by Google, is installed on over 95% of all mobile devices sold by OEMs utilizing
6 a merchant mobile OS. Indeed, Android OS is installed on nearly 75% of all smart mobile devices
7 sold by OEMs, including OEMs that use a proprietary mobile OS developed exclusively for their
8 own use (such as Apple's iOS).

9 30. A mobile ecosystem of products like apps, devices, and accessories typically
10 develops around one or more mobile OSs, such as the Android OS. The "Android ecosystem" is,
11 therefore, a system of mobile products that are inter-dependent and compatible with each other and
12 the Android OS. Ecosystem participants include Google, OEMs of Android-compatible devices,
13 developers of Android-compatible apps, Android app distribution platforms, the makers of ancillary
14 hardware such as headphones or speakers, cellular carriers, and others.

15 31. Mobile ecosystems benefit from substantial network effects—as more developers
16 design useful, compatible apps for a specific mobile OS, the more consumers will be drawn to use
17 that OS, and the more consumers using an OS, the more developers want to develop apps for it. As
18 a result, new entrants to the OS market face significant barriers to entry. A new OS is only as
19 desirable as the number of software applications running on it, and software developers are not
20 incentivized to create apps for an OS that lacks a large existing base of users.

21 32. To attract app developers and users, Google represents that Android is an "open"
22 ecosystem where any participant may create Android-compatible products without unnecessary
23 restrictions.

24 33. In fact, Google uses its Android OS to keep its ecosystem closed to any competition.
25 As the dominant OS licensor, Google recognizes that participation on its platform is a "must-have"

1 market for developers. Google only unlocks the door to its ecosystem for participants willing to
 2 play by Google's rules.

3 34. Moreover, Google uses the Android OS to restrict which apps and app stores OEMs
 4 pre-install on their devices and to deter the direct distribution of competing app stores and apps to
 5 Android users, all at the expense of competition in the Android ecosystem.

6 35. Because of Google's monopoly power in the Merchant Market for Mobile OS,
 7 OEMs, developers and users cannot choose another mobile OS. OEMs such as ZTE and Nokia
 8 acknowledge that other, non-proprietary OS are poor substitutes for and not a reasonable alternative
 9 to the Android OS, not least because other mobile OS do not presently support many high-quality
 10 and successful mobile apps deemed essential and/or valuable by consumers. Google, therefore, has
 11 constructed a market that biases consumers against devices with non-proprietary mobile OS other
 12 than Android OS, while putting OEMs at Google's mercy because their devices must offer a popular
 13 mobile OS and corresponding ecosystem to consumers.

14 **II. GOOGLE UNLAWFULLY MAINTAINS A MONOPOLY IN THE ANDROID**
 15 **MOBILE APP DISTRIBUTION MARKET.**

16 36. Mobile apps make mobile devices more useful and valuable because they add user-
 17 specific functionality like working, video chatting, banking, shopping, job hunting, photo editing,
 18 reading digital news sources, editing documents, or playing a game like Hearthstone or Pokémon
 19 Go. Many consumers do not even own a traditional computer. But even when a consumer can
 20 perform the same or similar functions on a personal computer, the ability to access apps "on the go"
 21 using a handheld, portable device remains valuable and important.

22 37. Some apps are pre-installed by OEMs. However, OEMs cannot anticipate the
 23 various apps a specific consumer may want, nor should they try since that may result in a device

1 overloaded with pre-installed apps of no interest to a given consumer. Moreover, apps developed
 2 after a user buys his or her mobile device cannot, as a practical matter, be pre-installed.

3 38. Consequently, mobile devices must provide a way for users to download and/or buy
 4 apps post-purchase. On Android devices, this is primarily done through the Google Play Store, a
 5 digital portal set up by Google. Through this Store, mobile apps can be browsed, purchased (if
 6 necessary), and downloaded by a consumer. App stores such as the Google Play Store, alongside
 7 other distribution platforms available to the hundreds of millions of consumers using Android-based
 8 mobile devices, comprise the Android App Distribution Market, defined below.

9 39. Through various anticompetitive acts and unlawful restraints on competition, Google
 10 maintains a monopoly in the Android Mobile App Distribution market, causing ongoing harm to
 11 competition and injury to OEMs, app distributors, app developers, and consumers. Google's
 12 restraints of trade undermine representations that "as an open platform, Android is about choice,"
 13 and that app developers "can distribute [their] Android apps to users in any way [they] want, using
 14 any distribution approach or combination of approaches that meets [their] needs," including by
 15 allowing users to directly download apps "from a website" or even by "emailing them directly to
 16 consumers." None of this is true, and Google has used anticompetitive means to ensure that this is
 17 the case.

18 **A. The Android App Distribution Market.**

19 40. There is a relevant market for the distribution of apps compatible with the Android
 20 OS to mobile device users (the "Android App Distribution Market"). This Market is comprised of
 21 all the channels by which mobile apps may be distributed to the hundreds of millions of mobile
 22 Android OS users. The Market primarily includes Google's dominant Google Play Store, with
 23 smaller stores, such as Samsung's Galaxy Store and Aptoide, trailing far behind. Nominally only,

1 the direct downloading of apps without using an app store (which Google pejoratively describes as
 2 “sideloading”) is also part of this market.

3 41. App stores allow consumers to use their mobile device to browse, search for, access
 4 reviews on, purchase (if necessary), download, and install mobile apps. It would be commercially
 5 unreasonable for an OEM to sell a smart mobile device without an app store since the ability to find,
 6 purchase and/or download apps is one of the primary benefits of such devices.

7 42. App stores are OS-specific and therefore only distribute apps compatible with a
 8 specific mobile OS. An Android OS owner will use an Android-compatible app store that distributes
 9 only Android-compatible mobile apps. That consumer may not, for example, substitute Apple’s App
 10 Store because it is not available on Android devices, not compatible with the Android OS, and does
 11 not offer Android-compatible apps. Consequently, non-Android mobile app distribution platforms
 12 are not part of the Android App Distribution Market.³

13 43. Notably, even if an app or game is available for different types of platforms running
 14 different operating systems, only the OS-compatible version of that software can run on a specific
 15 device, console, or computer. Accordingly, as a commercial reality, any app developer that wishes
 16 to distribute apps for Android mobile devices must develop an Android-specific version of the app
 17 that is distributed through the Android App Distribution Market.

18 44. In the alternative only, the Android App Distribution Market is a relevant,
 19 economically distinct sub-market of a hypothetical broader antitrust market for the distribution of
 20 mobile apps to users of all mobile devices, whether Android or Apple’s iOS.

³ These non-Android platforms would include, for example, the Windows Mobile Store used on Microsoft’s Windows Mobile OS, the Apple App Store used on Apple iOS devices, and gaming stores for specific consoles like the Sony PlayStation and/or Nintendo.

1 45. The geographic scope of the Android App Distribution Market is worldwide,
 2 excluding China.⁴ Outside of China, app distribution channels like app stores, are globally
 3 developed and distributed, and OEMs, in turn, make app stores like the Google Play Store globally
 4 available on Android devices.

5 46. The geographic scope of the Android App Distribution Market includes a separate
 6 market within the United States. The U.S. Android App Distribution Market operates as described
 7 throughout this Complaint.

8 **B. Google's Monopoly Power In The Android App Distribution Market.**

9 47. Google has monopoly power in the Android App Distribution Market.

10 48. Google's monopoly power is demonstrated by its massive market share in terms of
 11 apps downloaded. The European Commission determined that, within the Market, more than 90%
 12 of app store downloads were processed through the Google Play Store. The European Commission
 13 found the only other app store with any appreciable presence was the Windows Mobile Store, which
 14 is compatible with the Windows Mobile OS (and therefore excluded from the Android App
 15 Distribution Market). The Commission determined that even if the Windows Mobile Store share
 16 was included in the market, the Google Play Store would still possess a market share greater than
 17 90%.

18 49. Other existing Android mobile app stores cannot thwart Google's monopoly power
 19 in the Android App Distribution Market because no other app store reaches nearly as many Android
 20 users as the Google Play Store. The European Commission found the Google Play Store is pre-
 21 installed by OEMs on practically all Android mobile devices sold outside of China. No other

⁴ China is excluded from the relevant market because legal and regulatory barriers prevent the operation of many global app stores, including the Google Play Store, within China. Additionally, app stores prevalent in China are not available, or have little presence, outside of China.

1 Android app store comes close to that number of pre-installed users. With the exception of app
2 stores designed for and installed only on mobile devices sold by particular OEMs (for example,
3 Samsung Galaxy Apps and the LG Electronics App Store), no other Android app store is pre-
4 installed on more than 10% of Android devices, and many have no appreciable market penetration
5 at all. Aptoide, for example, is an Android app store that claims to be the largest “independent” app
6 store outside of China, but it comes pre-installed on no more than 5% of Android mobile devices.

7 50. Because of Google’s monopoly over Android app distribution, there is no viable
8 substitute to distribution through the Google Play Store. As a result, the Google Play Store offers
9 over 3 million apps, including all of the most popular Android apps, compared to just 700,000 apps
10 offered by Aptoide, the Android app store with the next largest listing. The Google Play Store
11 benefits from the large number of participating app developers and users. The ever-growing variety
12 of apps attracts more and more users, and, in turn, the audience attracts app developers who wish to
13 access Android users. The system feeds itself. Consequently, Android OEMs find it commercially
14 unreasonable to make and sell phones without the Google Play Store, and they view other app stores
15 as poor substitutes because they offer fewer and less impressive apps.

16 51. As further proof of its monopoly power, Google imposes a supra-competitive
17 commission of 30% on the price of apps purchased through the Google Play Store, which is a far
18 higher commission than would exist under competitive conditions.

19 52. Google’s monopoly power in app distribution is not constrained by competition at
20 the smart mobile device level, whether the relevant market is defined as the Android App
21 Distribution Market or, in the alternative, as the App Distribution Market in general.

22 53. First, consumers are deterred from leaving the Android ecosystem due to the
23 difficulty and costs of switching. Consumers choose a smartphone based in part on the pre-installed
24 OS and its ecosystem. Once a consumer selects a smartphone, the consumer cannot replace the pre-

1 installed mobile OS with an alternative. If they want to switch OS, that consumer must purchase a
 2 new mobile device. In addition, mobile OSs have different designs, controls, and functions that
 3 consumers learn to navigate over time. The cost of learning to use a different mobile OS is part of
 4 consumers' switching costs.

5 54. Second, switching from Android devices may result in a significant loss of personal
 6 and financial investment that consumers put into the Android ecosystem. Because apps, in-app
 7 content and many other products are designed for or are only compatible with a particular mobile
 8 OS, switching to a new mobile OS may mean losing access to such products or to data, even if such
 9 apps and products are available within the new ecosystem. A consumer switching OS would,
 10 consequently, lose their investment in the Android-specifics apps previously purchased and/or used.

11 55. Third, consumers have no reason to inquire, and therefore do not know about,
 12 Google's anticompetitive contractual restraints and policies. Mobile device purchasers are focused
 13 on design, brand, processing power, battery life, functionality and cellular plan. These features are
 14 likely to play a substantially larger role in a consumer's decision as to which smart mobile device
 15 to purchase than Google's anticompetitive conduct in the relevant markets.

16 56. Consumers are also unable to determine the "lifecycle price" of devices—*i.e.*, to
 17 accurately assess at the point of purchase how much they will ultimately spend (including on the
 18 device and all apps and in-app purchases) for the duration of their device ownership. Consumers
 19 cannot predict all of the apps or in-app content they may eventually purchase. Because they cannot
 20 know or predict all such factors when purchasing mobile devices, consumers are unable to calculate
 21 the lifecycle prices of the devices. This prevents consumers from effectively taking Google's
 22 anticompetitive conduct into account when making mobile device purchasing decisions.

1 57. Given consumers' essentially unavoidable "lock-in" to the Android OS, developers
 2 must participate in the Android ecosystem. The alternative is losing access to millions of Android
 3 users.

4 **C. Google's Anticompetitive Conduct Concerning The Android App Distribution**
 5 **Market.**

6 58. Google has willfully and unlawfully maintained its monopoly in the Android App
 7 Distribution Market through a series of related anticompetitive acts designed to foreclose alternative
 8 and competing Android app distribution channels.

9 59. Google imposes anticompetitive restrictions on OEMs.

10 60. First, Google conditions OEM licensing of the Google Play Store, as well as other
 11 essential Google services and the Android trademark, on an OEM's agreement to provide the Google
 12 Play Store with preferential treatment compared to any other competing app store.

13 61. Specifically, Android OEMs (which, as noted above, comprise virtually all OEMs
 14 that obtain an OS on the merchant market) must sign a Mobile Application Distribution Agreement
 15 ("MADA") with Google. A MADA confers a license to a product bundle comprised of proprietary
 16 Google apps, Google-supplied services necessary for mobile app functionality, and the Android
 17 trademark. The MADA requires OEMs to locate the Google Play Store on the "home screen" of
 18 each mobile device. Android OEMs must further pre-install up to 30 Google mandatory apps and
 19 locate these apps on the home screen or on the next screen, occupying valuable space on each user's
 20 mobile device that otherwise could be occupied by competing app stores and other services. These
 21 requirements ensure that the Google Play Store is the most visible app store any user encounters.
 22 All other app stores are, therefore, at a significant disadvantage.

23 62. Absent this restraint, OEMs could pre-install and prominently display alternative app
 24 stores. This would allow competing app stores to vie for prominent placement on Android devices,

1 increase exposure to consumers and, as a result, increase their ability to attract app developers to
2 their store. An app distributor could and would negotiate with OEMs to offer a prominently
3 displayed app store containing its apps, allowing it to reach more mobile users.

4 63. Second, Google interferes with OEMs' ability to distribute Android app stores and
5 apps directly to consumers outside the Google Play Store. Some OEMs might compete for buyers
6 by offering mobile devices with easy access to additional mobile app stores and apps through, for
7 instance, pre-installed and/or prominently placed icons. Even when an OEM wants to make mobile
8 apps available to consumers in this way, Google imposes unjustified and pretextual warnings about
9 the security of installing the app, even though the consumer is choosing to install the app in full
10 awareness of its source. This conduct dissuades users from downloading apps outside of the Google
11 Play Store.

12 64. Google also imposes anticompetitive restrictions on competing app distributors and
13 developers to further entrench its monopoly in Android App Distribution.

14 65. First, Google prevents app distributors from providing Android users ready access to
15 competing app stores. In other words, Google prevents developers from providing an app that, when
16 downloaded from the Google Play Store, would operate as a competing mobile storefront for other
17 app purchases. Google prohibits the distribution of any competing app store through the Google
18 Play Store, without any technological or other justification.

19 66. Google imposes this restraint through provisions of the Google Play Developer
20 Distribution Agreement ("DDA"), which Google requires all app developers to sign before they can
21 distribute their apps through the Google Play Store. Each of the Defendants, except Google
22 Payment, is a party to the DDA.

23 67. Section 4.5 of the DDA provides that developers "may not use Google Play to
24 distribute or make available any Product that has a purpose that facilitates the distribution of

1 software applications and games for use on Android devices outside of Google Play.” The DDA
2 further reserves to Google the right to remove and disable any Android app that it determines
3 violates this requirement. The DDA is non-negotiable, so developers seeking access to Android
4 users through the Google Play Store must accept Google’s standardized contract of adhesion.

5 68. In the absence of these unlawful restraints, competing app distributors could allow
6 users to replace or supplement the Google Play Store on their devices with competing app stores,
7 easily downloaded and installed through the Google Play Store. App stores could compete and
8 benefit consumers by offering lower prices and innovative app store models, such as app stores that
9 are curated to specific consumers’ interests—*e.g.*, an app store that specializes in games. Without
10 Google’s unlawful restraints, these app stores would provide additional platforms on which more
11 apps could be featured, and thereby, discovered by consumers.

12 69. Second, Google conditions app developers’ ability to effectively advertise their apps
13 to Android users on being listed in the Google Play Store. Specifically, Google markets an App
14 Campaigns program that, as Google says, allows app developers to “get your app into the hands of
15 more paying users” by “streamlin[ing] the process for you, making it easy to promote your apps
16 across Google’s largest properties.” This includes certain ad placements on Google Search,
17 YouTube, Discover on Google Search, and the Google Display Network, and with Google’s “search
18 partners,” that are specially optimized for the advertising of mobile apps. However, to access the
19 App Campaigns program, Google requires that app developers list their app in either the Google
20 Play Store (to reach Android users) or in the Apple App Store (to reach Apple iOS users). This
21 conduct further entrenches Google’s monopoly in Android App Distribution by coercing Android
22 app developers to list their apps in the Google Play Store or risk losing access to a great many
23 Android users they could otherwise advertise to, including through Google’s monopoly search
24 engine, but for Google’s restrictions.

1 70. Google directly and anticompetitively restricts how consumers discover, download
2 and install mobile apps and app stores. Although Google nominally allows consumers to directly
3 download and install Android apps and app stores—a process that Google pejoratively describes as
4 “sideloading”—Google uses the Android OS to impose a series of technological impediments
5 designed to dissuade users from direct downloads.

6 71. But for Google’s anticompetitive acts, Android users could freely download apps
7 from developers’ websites, rather than through an app store, just as they might do on a personal
8 computer. There is no reason that downloading and installing an app on a mobile device should be
9 different. Millions of personal computer users easily and safely download and install software
10 directly every day, such as Google’s own Chrome browser or Adobe’s Acrobat Reader.

11 72. Direct downloading on Android mobile devices, however, differs dramatically.
12 Google ensures that the Android process is technically complex, confusing and threatening, filled
13 with dire warnings that scare most consumers into abandoning the lengthy process.

14 73. Even after a user runs the gauntlet of warnings and threats, Google denies directly
15 downloaded apps the permissions necessary to be seamlessly updated in the background—a benefit
16 reserved solely for apps downloaded via the Google Play Store. Instead, users must manually trigger
17 these updates, which may even require revisiting the original download process, complete with its
18 hurdles and warnings. This imposes onerous obstacles on consumers who wish to keep the most
19 current version of an app on their mobile device and further drives consumers away from direct
20 downloading and toward Google’s monopolized app store.

21 74. Google further restricts direct downloading under the guise of offering protection
22 from malware. When Google deems an app “harmful,” Google may prevent the installation of,
23 prompt a consumer to uninstall, or forcibly remove the app from a consumer’s device. Direct
24 downloading is entirely prevented on Android devices that are part of Google’s so-called Advanced

1 Protection Program (“APP”). Consumers who enroll in APP cannot directly download apps; their
 2 Android device can only download apps distributed in the Google Play Store or in another pre-
 3 installed app store that Google pre-approved an OEM to offer on its devices. App developers
 4 therefore cannot reach APP users unless they first agree to distribute their apps through the Google
 5 Play Store or through a separate Google-approved, OEM-offered app store, where available.
 6 Google’s invocation of security is an excuse to further strangle an app developer’s ability to reach
 7 Android users, as shown by a comparison to personal computers, where users can securely purchase
 8 and download new software without being limited to a single software store owned or approved by
 9 the user’s anti-virus software vendor. This comparison shows that Google’s multiple technical
 10 barriers to direct downloading from alternative sources go far beyond what is necessary to achieve
 11 any legitimate security objections. Put differently, Google has not adopted the least restrictive means
 12 necessary for achieving any legitimate security objectives.

13 75. Direct downloading is also nominally available to competing app distributors who
 14 seek to distribute competing Android app stores directly to consumers. However, the same
 15 restrictions Google imposes on the direct downloading of apps apply to the direct downloading of
 16 app stores. Indeed, Google Play Protect has flagged at least one competing Android app store,
 17 Aptoide, as “harmful,” further hindering consumers’ ability to access a competing app store.

18 76. Additionally, apps downloaded from “sideloaded” app stores, like apps directly
 19 downloaded from a developer’s website, may not be automatically uploaded in the background.
 20 Thus, direct downloading is not a viable way for app stores to reach Android users, any more than
 21 it is a viable alternative for single apps. The only difference is that the former do not have any
 22 alternative, ensuring the latter are forced into the Google Play Store. Google’s barriers erected
 23 against competing app distributors also are not the least restrictive means necessary to achieve any
 24 legitimate security objectives.

1 77. But for Google's restrictions on direct downloading, app distributors and developers
 2 could try to directly distribute their stores and apps to consumers. As explained above, Google
 3 makes direct downloading substantially and unnecessarily difficult, and in some cases prevents it
 4 entirely, further narrowing this already narrow alternative distribution channel.

5 78. There is no legitimate reason for Google's conduct, and even if there were, Google
 6 has not adopted the least restrictive means for achieving it. For decades, PC users have installed
 7 software acquired from various sources without being deterred by anything like the obstacles erected
 8 by Google. A PC user can navigate to an internet webpage, click to download and install an
 9 application, and be up and running, often in a matter of minutes. Security screening is conducted by
 10 a neutral security software operating in the background, allowing users to download software from
 11 any source they choose (unlike Android).

12 79. Through these anticompetitive acts, including contractual provisions and
 13 exclusionary obstacles, Google has willfully obtained a near-absolute monopoly over Android
 14 mobile app distribution. Google Play Store downloads have accounted for more than 90% of
 15 downloads through Android app stores, dwarfing other available distribution channels.

16 **D. Anticompetitive Effects In The Android App Distribution Market.**

17 80. Google's anticompetitive conduct forecloses competition in the Android App
 18 Distribution Market, affects a substantial volume of commerce in this Market and causes
 19 anticompetitive harms to OEMs, competing mobile app distributors, mobile app developers, and
 20 consumers.

21 81. As described above, Google's anticompetitive conduct harms OEMs by forcing them
 22 to dedicate valuable "home screen" real estate to the Google Play Store and other mandatory Google
 23 applications, regardless of the OEM's preferences, which might include allowing other app stores
 24 or developers to place an icon there. Individually and together, these requirements limit OEMs'

1 ability to differentiate themselves and compete with each other by offering innovative and more
 2 appealing (in terms of price and quality) distribution platforms for mobile apps. Google's
 3 restrictions also interfere with OEMs' ability to compete with each other by offering Android
 4 devices with tailored combinations of pre-installed apps that would appeal to particular subsets of
 5 mobile device consumers.

6 82. Google's anticompetitive conduct harms would-be competitor app distributors,
 7 which could otherwise innovate new models of app distribution and provide OEMs, app developers,
 8 and consumers choice beyond Google's own app store.

9 83. Google's anticompetitive conduct harms app developers, who must agree to
 10 Google's anticompetitive terms and conditions to reach many Android users, through downloads or
 11 Google's advertising platforms. Google's restrictions prevent developers from experimenting with
 12 alternative app distribution models, such as providing apps directly to consumers, selling apps
 13 through curated app stores, creating their own competing app stores, or forming business
 14 relationships with OEMs who can pre-install apps. By restricting developers, Google ensures that
 15 the developer's apps will be distributed on the Google Play Store, which empowers Google to
 16 monitor the apps' usage. This information can, in turn, be used by Google to develop and offer its
 17 own competing apps that are, of course, not subject to Google's supra-competitive taxes.

18 84. Both developers and consumers are harmed by Google's supra- competitive taxes of
 19 30% on the purchase price of apps distributed through the Google Play Store, which is a much higher
 20 transaction fee than would exist in a competitive market unimpaired by Google's anticompetitive
 21 conduct. Google's supra-competitive taxes raise prices for app developers and consumers and
 22 reduce the output of mobile apps and related content by depriving app developers of incentive and
 23 capital to develop new apps and content.

1 85. Consumers are further harmed because Google's control of app distribution reduces
 2 developers' ability and incentive to distribute apps in different and innovative ways—for example,
 3 through genre-specific app stores. Google, by restraining the distribution market and eliminating the
 4 ability and incentive for competing app stores, also limits consumers' ability to discover new apps
 5 of interest to them. More competing app stores would permit additional platforms to feature diverse
 6 collections of apps. Instead, consumers are left to sift through millions of apps in one monopolized
 7 app store, where Google controls which apps are featured, identified or prioritized in user searches.

8 **III. GOOGLE UNLAWFULLY MAINTAINS A MONOPOLY IN THE ANDROID IN-**
 9 **APP PAYMENT PROCESSING MARKET**

10 86. By selling digital content within a mobile app rather than charging for the app itself,
 11 app developers can make an app widely accessible to all users, then generate revenue to use in
 12 developing new games. This is especially true for mobile game developers. By allowing users to
 13 play without up-front costs, developers permit more players try a game "risk free" and only pay for
 14 what they want to access. Many games are free to download and play, but make additional content
 15 available for in-app purchasing on an à la carte basis or via a subscription-based service. App
 16 developers who sell digital content rely on in-app payment processing tools to process consumers'
 17 purchases in a seamless and efficient manner.

18 87. Google has pursued a strategy of anticompetitive conduct, however, to ensure that
 19 Android app developers are not free to utilize any one of the multitude of electronic payment
 20 processing solutions available to process in-app purchases and other transactions. Instead, Google
 21 conditions developers' access to the dominant Google Play Store on an agreement to use Google
 22 Play Billing to process in-app purchases of digital content. Google thus ties its Google Play Store
 23 to its own proprietary payment processing tool and uses that tie to maintain its monopoly over the
 24 Android In-App Payment Processing Market, as defined below.

1 88. Absent Google’s unlawful conduct, app developers could integrate compatible
 2 payment processors into their apps to facilitate in-app digital content purchases or develop such
 3 functionality themselves. Developers could even offer users a choice among multiple payment
 4 processors for each purchase, just like a website or brick-and-mortar store can offer a customer the
 5 option of using Visa, MasterCard, Amex, Google Pay, and more. This would, in turn, result in lower
 6 prices for consumers.

7 **A. Google’s Monopoly Power In The Android In-App Payment Processing Market**

8 89. There is a relevant antitrust market for processing payment for digital content,
 9 including virtual gaming products, within Android apps (the “Android In-App Payment Processing
 10 Market”). The Android In-App Payment Processing Market is comprised of the payment processing
 11 solutions that Android developers could integrate into their Android apps to process the purchase of
 12 in-app digital content.

13 90. App developers selling in-app digital content must offer transactions that are
 14 seamless, engrossing, quick, and fun. It is critical that such purchases can be made during gameplay
 15 itself.

16 91. Mobile game developers particularly value seamless in-app purchases that extend or
 17 enhance gameplay without disrupting or delaying that gameplay or a gamer’s engagement with the
 18 mobile app. For these reasons, and in the alternative, there is a relevant antitrust sub-market for the
 19 processing of payments for the purchase of virtual gaming products within mobile Android games
 20 (the “Android Games Payment Processing Market”).

21 92. The geographic scope of the Android In-App Payment Processing Market is
 22 worldwide, excluding China. Outside China, in-app payment processing tools, such as Google Play
 23 Billing, are available on a worldwide basis. By contrast, in-app payment processing tools available
 24 in China are not available outside of China, including because Google prevents the use of non-

1 Google payment processing tools for all apps distributed through the Google Play Store, which as
 2 noted above dominates distribution of apps outside of China.

3 93. The geographic scope of the Android In-App Payment Processing Market includes a
 4 separate market within the United States. The U.S. Android In-App Payment Processing Market
 5 operates as described throughout this Complaint.

6 94. Google has monopoly power in the Android In-App Payment Processing Market and,
 7 in the alternative, in the Android Games Payment Processing Market.

8 **B. Google's Anticompetitive Conduct in the Android In-App Payment Processing
 9 Market**

10 95. For apps distributed through the Google Play Store, Google requires use of Google
 11 Play Billing to process in-app purchases of digital content and for all purchases within Android
 12 games. Because 90% or more of Android-compatible mobile app downloads through an app store
 13 are conducted in the Google Play Store, Google has a monopoly in these Markets.

14 96. Google charges a 30% commission for Google Play Billing. This rate reflects
 15 Google's market power, which allows it to charge supra-competitive prices for payment processing
 16 within the market. Indeed, the cost of alternative electronic payment processing tools, which are
 17 prohibited by Google for apps purchased through the Google Play Store, can be one tenth of the
 18 30% cost of Google Play Billing.

19 97. Through provisions of Google's DDA imposed on all developers seeking access to
 20 Android users, Google unlawfully ties its Google Play Store, through which it has a monopoly in
 21 the Android App Distribution Market, to its own in-app payment processing tool, Google Play
 22 Billing. Section 3.2 of the DDA requires that Android app developers enter into a separate
 23 agreement with Google's payment processor, Google Payment, to receive payment for and from
 24 apps and in-app digital content.

1 98. Further, § 4.1 of the DDA makes compliance with Google's Developer Program
 2 Policies mandatory and those Policies require in relevant part that (1) Developers offering products
 3 within a game downloaded on Google Play or providing access to game content must use Google
 4 Play In-app Billing as the method of payment and (2) Developers offering products within another
 5 category of app downloaded on Google Play must use Google Play In-app Billing as the method of
 6 payment, except when the payment is solely for physical products or is for digital content that may
 7 be consumed outside of the app itself (*e.g.*, songs that can be played on other music players).

8 99. Google's unlawful restraints in the DDA prevent app developers from integrating
 9 alternative, even multiple, payment processing solutions into their mobile apps, depriving app
 10 developers and consumers alike a choice of competing payment processors.

11 100. Google has no legitimate justifications for its tie. If it were concerned, for example,
 12 about the security of its users' payment information, then it would not permit alternative payment
 13 processing for certain transactions made on Android phones for physical products or digital content
 14 consumed outside an app. But Google does allow alternative payment processing tools in that
 15 context, with no diminution in security.

16 **C. Anticompetitive Effects In The Android In-App Payment Processing.**

17 101. Google's conduct harms competition in the Android In-app Payment Processing
 18 Market (and, in the alternative, in the Android Games Payment Processing Market) and injures app
 19 developers, consumers, and competing in-app payment processors.

20 102. Google's conduct harms would-be competitor in-app payment processors who would
 21 otherwise be free to innovate and offer Android consumers alternative payment processing tools
 22 with better functionality, lower prices, and tighter security. Absent Google's Developer Program
 23 Policies, for example, app designers could offer consumers a choice of in-app payment processors

1 for each purchase made by the consumer, including payment processors at a lower cost and with
 2 better customer service.

3 103. Google also harms app developers and consumers by inserting itself as a mandatory
 4 middleman in every in-app transaction. This prevents app developers from providing users
 5 comprehensive customer service relating to in-app payments without Google's involvement.
 6 Google has little incentive to compete through improved customer service because it faces no
 7 competition. Google *does*, however, have an incentive to obtain information concerning developers'
 8 transactions with their customers, which Google could use to give its ads and search businesses an
 9 anticompetitive edge. This is true regardless of whether the developer and or the app's users would
 10 prefer not to share their information with Google. In these ways and others, Google directly harms
 11 app developers' relationships with the users of their apps.

12 104. Finally, Google raises app developers' costs and consumer prices through its supra-
 13 competitive 30% tax on in-app purchases, a price it could not maintain in a competitive payment
 14 processing market. The resulting increase in prices for in-app content likely deters some consumers
 15 from making purchases and deprives app developers of resources they could use to develop new
 16 apps and content. The supra-competitive tax rate also reduces developers' incentive to invest in and
 17 create additional apps and related in-app content.

18 **IV. ANTITRUST INJURY**

19 105. Plaintiff and class members have suffered antitrust injury as a direct result of
 20 Google's unlawful conduct.

21 106. By impairing competition in the Android App Distribution Market, Google's
 22 unlawful conduct has enabled it to charge supra-competitive prices for Android Apps.

1 107. By impairing competition in the Android In-App Payment Processing Market,
 2 Google's unlawful conduct has enabled it to charge supra-competitive prices for in-app digital
 3 content.

4 108. Plaintiff and the Class are the direct purchasers of Android Apps and in-game digital
 5 content. When Plaintiff and the Class purchased Android apps, they did so directly on Google Play
 6 and paid Google directly, using their credit card or other payment sources. When Plaintiff and the
 7 Class purchased in-game digital content, they did so through Google Play, using the pre-established
 8 payment streams set up when purchasing that app or other apps on Google Play. When Plaintiff and
 9 the Class purchased the in-game digital content, they paid Google directly.

10 **V. CLASS ALLEGATIONS**

11 109. Plaintiff brings this action for herself and as a class action under Rule 23(a), (b)(2)
 12 and (b)(3) of the Federal Rules of Civil Procedure on behalf of the following class (the "Class"):

13 All persons in the United States who paid for an app on Google Play, subscribed to an app
 14 obtained on Google Play, or paid for in-app digital content on an app obtained on Google
 15 Play within the relevant statute of limitations (the "Class Period").

16 110. Specifically excluded from the Class are Defendants; the officers, directors, or
 17 employees of any Defendant; any entity in which any Defendant has a controlling interest; any
 18 affiliate, legal representative, heir, or assign of any Defendant and any person acting on their behalf.
 19 Also excluded from the Class are any judicial officer presiding over this action and the members of
 20 his/her immediate family and judicial staff, and any juror assigned to this action.

21 111. The Class is readily ascertainable and the records for the Class should exist,
 22 including, specifically, within Defendants' own records and transaction data.

1 112. Due to the nature of the trade and commerce involved, there are tens of millions of
 2 geographically dispersed members in the Class, the exact number and their identities being known
 3 to Defendants.

4 113. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and
 5 members of the Class sustained damages arising out of Defendants' common course of conduct in
 6 violation of the laws alleged herein. The damages and injuries of each member of the Class were
 7 directly caused by Defendants' wrongful conduct.

8 114. There are questions of law and fact common to the Class, and those questions
 9 predominate over any questions affecting only individual members of the Class. These common
 10 questions of law and fact include, but are not limited to:

- 11 • whether Google has monopoly power in the Android App Distribution Market;
- 12 • whether Google has market power in the alternatively defined App Distribution
 Market;
- 13 • whether Google has monopoly power in the Android In-App Payment Processing
 Market;
- 14 • whether Google's contractual restrictions for Google Play further Google's attempt
 to monopolize the Android App Distribution Market;
- 15 • whether Google's restriction on side-loading apps is an attempt to, and does in fact
 further, Google's monopoly over the Android App Distribution Market;
- 16 • whether Google's tie of its Google Play and Google Billing products furthers
 Google's attempt to monopolize the Android In-App Payment Processing Market;
- 17 • whether Google's conduct with respect to the Android In-App Payment Processing
 Market has attempted to monopolize that market;

- whether Google's conduct results in supra-competitive prices for Android Apps and for in-game purchases of Android Apps;
- whether Google's conduct has harmed or at least not benefited consumers; and
- the appropriate Class-wide measures of damages.

5 115. A class action is superior to other available methods for the fair and efficient
6 adjudication of this controversy. The prosecution of separate actions by individual members of the
7 Class would impose heavy burdens on the courts and Defendants and would create a risk of
8 inconsistent or varying adjudications of the questions of law and fact common to the Class. A class
9 action, on the other hand, would achieve substantial economies of time, effort, and expense and
10 would assure uniformity of decision as to persons similarly situated without sacrificing procedural
11 fairness or bringing about other undesirable results. Absent a class action, it would not be feasible
12 for the vast majority of the Class members to seek redress for the violations of law alleged herein.

CAUSES OF ACTION

COUNT 1: Sherman Act § 2 Unlawful Monopoly Maintenance in the Android App Distribution Market
(Against all Defendants except Google Payment)

18 116. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
19 forth in the rest of this Complaint as if fully set forth herein.

20 117. Google's conduct violates §2 of the Sherman Act, which prohibits the
21 "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign
22 nations." 15 U.S.C. § 2.

²³ 118. The Android App Distribution Market is a valid antitrust market.

24 || 119. Google holds monopoly power in the Android App Distribution Market.

1 120. Google has unlawfully maintained monopoly power in the Android App Distribution
2 Market through the anticompetitive acts described herein, including, but not limited to: (1)
3 conditioning licensing of the Google Play Store, as well as other essential Google services and the
4 Android trademark, on OEMs' agreement give the Google Play Store preferential placement and
5 treatment; (2) imposing technical restrictions and obstacles on both OEMs and developers that
6 prevent the distribution of Android apps through means other than the Google Play Store; and (3)
7 conditioning app developers' ability to effectively advertise their apps to Android users on being
8 listed in the Google Play Store.

9 121. Google's conduct affects a substantial volume of interstate as well as foreign
10 commerce.

11 122. Google's conduct has substantial anticompetitive effects, including increased prices
12 and costs, reduced innovation and quality of service, and lowered output.

13 123. Plaintiff was harmed by Defendants' anticompetitive conduct in a manner that the
14 antitrust laws were intended to prevent. For example, she paid more for Android apps and/or in-app
15 purchases than she would have paid in a competitive market. Plaintiff was also injured because
16 Google's unlawful monopolization of the Android apps and in-app purchases aftermarket
17 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
18 alternatives that would have been available had Google not monopolized the market. Additionally,
19 Plaintiff was injured because Google's establishment and maintenance of monopoly pricing has
20 caused a reduction in the output and supply of Android apps and in-app purchases, which would
21 have been more abundantly available in a competitive market. Plaintiff has suffered and continues
22 to suffer damages and irreparable injury, and such damages and injury will not abate until an
23 injunction ending Google's anticompetitive conduct issues.

1 **COUNT 2: Sherman Act § 1 Unreasonable Restraints of Trade Concerning The Android**
2 **App Distribution Market: OEMs**
3 **(Against all Defendants except Google Payment)**

4 124. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
5 forth in the rest of this Complaint as if fully set forth herein.

6 125. Defendants' conduct violates §1 of the Sherman Act, which prohibits “[e]very
7 contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or
8 commerce among the several States, or with foreign nations.” 15 U.S.C. § 1.

9 126. Google entered into agreements with OEMs that unreasonably restrict competition
10 in the Android App Distribution Market. These include MADA with OEMs that condition their
11 access to the Google Play Store and other “must have” Google services on the OEM offering the
12 Google Play Store as the primary (and often the only) viable app store on Android mobile devices.

13 127. These agreements serve no legitimate or pro-competitive purpose that could justify
14 their anticompetitive effects, and thus unreasonably restrain competition in the Android App
15 Distribution Market.

16 128. Google's conduct affects a substantial volume of interstate as well as foreign
17 commerce.

18 129. Google's conduct has substantial anticompetitive effects, including increased prices
19 and costs, reduced innovation and quality of service, and lowered output.

20 130. Plaintiff was harmed by Defendants' anticompetitive conduct in a manner that the
21 antitrust laws were intended to prevent. For example, she paid more for Android apps and/or in-app
22 purchases than she would have paid in a competitive market. Plaintiff was also injured because
23 Google's unlawful monopolization of the Android apps and in-app purchases aftermarket
24 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
25 alternatives that would have been available had Google not monopolized the market. Plaintiff was

1 further injured because Google's establishment and maintenance of monopoly pricing has caused a
2 reduction in the output and supply of Android apps and in-app purchases, which would have been
3 more abundantly available in a competitive market. Plaintiff has suffered and will continue to suffer
4 damages and irreparable injury, and such damages and injury will not abate until an injunction
5 ending Google's anticompetitive conduct issues.

6 **COUNT 3: Sherman Act § 1 Unreasonable Restraints of Trade Concerning The Android**
7 **App Distribution Market: DDA**
8 **(Against all Defendants except Google Payment)**

9
10 131. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
11 forth in the rest of this Complaint as if fully set forth herein.

12 132. Defendants' conduct violates §1 of the Sherman Act, which prohibits “[e]very
13 contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or
14 commerce among the several States, or with foreign nations.” 15 U.S.C. § 1.

15 133. Google forces app developers to enter its standardized DDA, including Developer
16 Program Policies integrated into that Agreement, as a condition of their apps being distributed
17 through the Google Play Store. The relevant provisions of these agreements unreasonably restrain
18 competition in the Android App Distribution Market.

19 134. Section 4.5 of the DDA provides that developers “may not use Google Play to
20 distribute or make available any Product that has a purpose that facilitates the distribution of
21 software applications and games for use on Android devices outside of Google Play.” Section 4.1
22 of the DDA requires that all developers “adhere” to Google’s Developer Program Policies. Under
23 the guise of its so-called “Malicious Behavior” Policy, Google prohibits developers from
24 distributing apps that “download executable code [*i.e.*, code that would execute an app] from a
25 source other than Google Play.” The DDA further reserves to Google the right to remove and disable
26 any Android app that it determines violates either the DDA or its Developer Program Policies and

1 to terminate the app on these bases. (§§ 8.3, 10.3.) These provisions prevent app developers from
2 offering competing app stores through the Google Play Store, even though there is no legitimate
3 technological or other impediment to distributing a competing app store through the Google Play
4 Store.

5 135. These agreements serve no legitimate or pro-competitive purpose that could justify
6 their anticompetitive effects, and thus unreasonably restrain competition in the Android App
7 Distribution Market.

8 136. Google's conduct affects a substantial volume of interstate as well as foreign
9 commerce.

10 137. Google's conduct has substantial anticompetitive effects, including increased prices
11 and costs, reduced innovation and quality of service, and lowered output.

12 138. Plaintiff was harmed by Defendants' anticompetitive conduct in a manner that the
13 antitrust laws were intended to prevent. For example, she paid more for Android apps and/or in-app
14 purchases than she would have paid in a competitive market. Plaintiff was also injured because
15 Google's unlawful monopolization of the Android apps and in-app purchases aftermarket has
16 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
17 alternatives that would have been available had Google not monopolized the market. Plaintiff was
18 further injured because Google's establishment and maintenance of monopoly pricing has caused a
19 reduction in the output and supply of Android apps and in-app purchases, which would have been
20 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer
21 damages and irreparable injury, and such damages and injury will not abate until an injunction
22 ending Google's anticompetitive conduct issues.

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1 **COUNT 4: Sherman Act § 2 Unlawful Monopolization and Monopoly Maintenance in the**
2 **Android In-App Payment Processing Market**
3 **(Against all Defendants)**

4
5 139. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
6 forth in the rest of this Complaint as if fully set forth herein.

7 140. Google's conduct violates §2 of the Sherman Act, which prohibits the
8 "monopoliz[ation of] any part of the trade or commerce among the several States, or with foreign
9 nations." 15 U.S.C. § 2.

10 141. The Android In-App Payment Processing Market is a valid antitrust market. In the
11 alternative, the Android Games Payment Processing Market is a valid antitrust market.

12 142. Google holds monopoly power in the Android In-App Payment Processing Market
13 and, in the alternative, in the Android Games Payment Processing Market.

14 143. Google has unlawfully acquired monopoly power in these Markets, including
15 through the anticompetitive acts described herein. However Google initially acquired its monopoly,
16 it has unlawfully maintained its monopoly through the anticompetitive acts described herein.

17 144. Google's conduct affects a substantial volume of interstate as well as foreign
18 commerce.

19 145. Google's conduct has substantial anticompetitive effects, including increased prices
20 and costs, reduced innovation and quality of service, and lowered output.

21 146. Plaintiff was harmed by Defendants' anticompetitive conduct in a manner that the
22 antitrust laws were intended to prevent. For example, she paid more for Android apps and/or in-app
23 purchases than she would have paid in a competitive market. Plaintiff was also injured because
24 Google's unlawful monopolization of the Android apps and in-app purchases aftermarket has
25 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
26 alternatives that would have been available had Google not monopolized the market. Plaintiff was

1 further injured because Google's establishment and maintenance of monopoly pricing has caused a
2 reduction in the output and supply of Android apps and in-app purchases, which would have been
3 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer
4 damages and irreparable injury, and such damages and injury will not abate until an injunction
5 ending Google's anticompetitive conduct issues.

6 **COUNT 5: Sherman Act § 1 Unreasonable Restraints of Trade Concerning Android In-App**
7 **Payment Processing Market**
8 **(Against all Defendants)**

9
10 147. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
11 forth in the rest of this Complaint as if fully set forth herein.

12 148. Defendants' conduct violates §1 of the Sherman Act, which prohibits “[e]very
13 contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or
14 commerce among the several States, or with foreign nations.”

15 149. Google, except Google Payment, forces app developers to enter its standardized
16 DDA, including Developer Program Policies integrated into that Agreement, as a condition of
17 having their apps distributed through Google's monopolized app store, Google Play Store. The
18 relevant provisions of these agreements unreasonably restrain competition in the Android In-App
19 Payment Processing Market.

20 150. Section 3.2 of the DDA requires that Android app developers enter into a separate
21 agreement with Google's payment processor, Defendant Google Payment, in order to receive
22 payment for apps and content distributed through the Google Play Store. This includes payments
23 related to in-app purchases of digital content. Further, compliance with Google's Developer
24 Program Policies, which § 4.1 of the DDA makes obligatory, requires that apps distributed through
25 the Google Play Store “must use Google Play In-app Billing [offered by Google Payment] as the
26 method of payment” for such in-app purchases. While Google's Policies exclude certain types of

1 transactions from this requirement, such as the purchase of “solely physical products” or of “digital
2 content that may be consumed outside of the app itself,” Google expressly applies its anticompetitive
3 mandate to every “game downloaded on Google Play” and to all purchased “game content.”

4 151. The challenged provisions serve no sufficient legitimate or pro-competitive purpose
5 and unreasonably restrain competition in the Android In-App Payment Processing Market and, in
6 the alternative, the Android Games Payment Processing Market.

7 152. Defendants’ conduct affects a substantial volume of interstate as well as foreign
8 commerce.

9 153. Defendants’ conduct has substantial anticompetitive effects, including increased
10 prices and costs, reduced innovation and quality of service, and lowered output.

11 154. Plaintiff was harmed by Defendants’ anticompetitive conduct in a manner that the
12 antitrust laws were intended to prevent. For example, she paid more for Android apps and/or in-app
13 purchases than she would have paid in a competitive market. Plaintiff was also injured because
14 Google’s unlawful monopolization of the Android apps and in-app purchases aftermarket has
15 extinguished Plaintiff’s freedom to choose between the Google Play Store and lower cost market
16 alternatives that would have been available had Google not monopolized the market. Plaintiff was
17 further injured because Google’s establishment and maintenance of monopoly pricing has caused a
18 reduction in the output and supply of Android apps and in-app purchases, which would have been
19 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer
20 damages and irreparable injury, and such damages and injury will not abate until an injunction
21 ending Google’s anticompetitive conduct issues.

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1 **COUNT 6: Sherman Act § 1 Tying Google Play Store to Google Play Billing**
2 **(Against all Defendants)**
3

4 155. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
5 forth in the rest of this Complaint as if fully set forth herein.

6 156. Defendants' conduct violates Section 1 of the Sherman Act, which prohibits "[e]very
7 contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or
8 commerce among the several States, or with foreign nations." 15 U.S.C. § 1.

9 157. Google has unlawfully tied the Google Play Store to its in-app payment processor,
10 Google Play Billing, through its DDAs with app developers and its Developer Program Policies.

11 158. Google wields significant economic power in the tying market, the Android App
12 Distribution Market. With Google Play Store installed on nearly all Android OS devices and over
13 90% of downloads on Android OS devices being performed by the Google Play Store, Google has
14 overwhelming market power. Google's market power is further evidenced by its ability to extract
15 supra-competitive taxes on the sale of apps through the Google Play Store.

16 159. Google only makes the Google Play Store available to those app developers who
17 agree to exclusively process all app-related payments (including in-app purchases) through Google
18 Billing. This tie is especially powerful and effective because Google simultaneously forecloses a
19 developer's ability to use alternative app distribution channels, as described above. Taken together,
20 Google's conduct effectively forces developers to use Google Billing.

21 160. The tying product, Android app distribution, is distinct from the tied product,
22 Android in-app payment processing, because app developers have alternative in-app payment
23 processing options and would prefer to choose among them independently of distribution. Google's
24 unlawful tying arrangement thus ties two separate products that are in separate markets.

1 161. Google's conduct forecloses competition in the Android In-App Payment Processing
2 Market, and, in the alternative, in the Android Games Payment Processing Market, affecting a
3 substantial volume of commerce in these Markets.

4 162. Google has thus engaged in a *per se* illegal tying arrangement and the Court does not
5 need to engage in a detailed assessment of the anticompetitive effects of Google's conduct or its
6 purported justifications.

7 163. In the alternative only, even if Google's conduct does not constitute a *per se* illegal
8 tie, a detailed analysis of Google's tying arrangement would demonstrate that this arrangement
9 violates the rule of reason and is illegal.

10 Plaintiff was harmed by Defendants' anticompetitive conduct in a manner that the
11 antitrust laws were intended to prevent. For example, she paid more for Android apps and/or in-app
12 purchases than she would have paid in a competitive market. Plaintiff was also injured because
13 Google's unlawful monopolization of the Android apps and in-app purchases aftermarket has
14 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
15 alternatives that would have been available had Google not monopolized the market. Plaintiff was
16 further injured because Google's establishment and maintenance of monopoly pricing has caused a
17 reduction in the output and supply of Android apps and in-app purchases, which would have been
18 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer
19 damages and irreparable injury, and such damages and injury will not abate until an injunction
20 ending Google's anticompetitive conduct issues.

**COUNT 7: California Cartwright Act Unreasonable Restraints of Trade in Android App Distribution Market
(Against all Defendants except Google Payment)**

25 165. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
26 forth in the rest of this Complaint as if fully set forth herein.

1 166. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. &
2 Prof. Code § 16700 et seq., which prohibits, *inter alia*, the combination of resources by two or more
3 persons to restrain trade or commerce or to prevent market competition. *See id.* §§ 16720, 16726.

4 167. Under the Cartwright Act, a "combination" is formed when the anticompetitive
5 conduct of a single firm coerces other market participants to involuntarily adhere to the
6 anticompetitive scheme.

7 168. The Android App Distribution Market is a valid antitrust market.

8 169. Google has executed agreements with OEMs that unreasonably restrict competition
9 in the Android App Distribution Market. Namely, Google entered into MADAs with OEMs that
10 require OEMs to offer the Google Play Store as the primary—and practically the only—app store
11 on Android mobile devices. These agreements further prevent OEMs from offering alternative app
12 stores on Android mobile devices in any prominent visual positioning.

13 170. Google's conduct and practices have substantial anticompetitive effects, including
14 increased prices and costs, reduced innovation, poorer customer service and lowered output.

15 171. It is appropriate to bring this action under the Cartwright Act because many of the
16 illegal agreements were made in California and purport to be governed by California law, many
17 affected consumers reside in California, Google has its principal place of business in California and
18 overt acts in furtherance of Google's anticompetitive scheme took place in California.

19 172. Plaintiff was harmed by Defendants' anticompetitive conduct in a manner that the
20 Cartwright Act was intended to prevent. For example, she paid more for Android apps and/or in-
21 app purchases than she would have paid in a competitive market. Plaintiff has also been injured
22 because Google unlawful monopolization of the Android apps and in-app purchases aftermarket has
23 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
24 alternatives that would have been available had Google not monopolized the market. Plaintiff was

1 also injured because Google's establishment and maintenance of monopoly pricing has caused a
2 reduction in the output and supply of Android apps and in-app purchases, which would have been
3 more abundantly available in a competitive market. Plaintiff has suffered and continue to suffer
4 damages and irreparable injury, and such damages and injury will not abate until an injunction
5 ending Google's anticompetitive conduct issues.

6 **COUNT 8: California Cartwright Act Unreasonable Restraints of Trade in Android App**
7 **Distribution Market**
8 **(Against all Defendants except Google Payment)**

9
10 173. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
11 forth in the rest of this Complaint as if fully set forth herein.

12 174. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. &
13 Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more
14 persons to restrain trade or commerce or to prevent market competition. *See id.* §§ 16720, 16726.

15 175. Under the Cartwright Act, a "combination" is formed when the anti-competitive
16 conduct of a single firm coerces other market participants to involuntarily adhere to the
17 anticompetitive scheme.

18 176. The Android App Distribution Market is a valid antitrust market.

19 177. Google conditions distribution through the Google Play Store on entering into the
20 standardized DDA described above, including the Developer Program Policies integrated therein.
21 Through certain provisions in these agreements, Google forces app developers to submit to
22 conditions that unreasonably restrain competition in the Android App Distribution Market.

23 178. Section 4.5 of the DDA provides that developers "may not use Google Play to
24 distribute or make available any Product that has a purpose that facilitates the distribution of
25 software applications and games for use on Android devices outside of Google Play." Section 4.1
26 of the DDA requires that all developers "adhere" to Google's Developer Program Policies. Under

1 the guise of its so-called “Malicious Behavior” Policy, Google prohibits developers from
2 distributing apps that “download executable code [*i.e.*, code that would execute an app] from a
3 source other than Google Play.” The DDA further reserves to Google the right to remove and disable
4 any Android app that it determines violates either the DDA or its Developer Program Policies and
5 to terminate the DDA on these bases. (§§ 8.3, 10.3.) These provisions prevent app developers from
6 offering competing app stores through the Google Play Store, even though there is no legitimate
7 technological or other impediment to distributing a competing app store through the Google Play
8 Store.

9 179. These provisions have no legitimate or pro-competitive purpose or effect, and
10 unreasonably restrain competition in the Android App Distribution Market.

11 180. Google’s conduct and practices have substantial anticompetitive effects, including
12 increased prices and costs, reduced innovation, poorer customer service, and lowered output.

13 181. It is appropriate to bring this action under the Cartwright Act because many of the
14 illegal agreements were made in California and purport to be governed by California law, many
15 affected consumers reside in California, Google has its principal place of business in California, and
16 overt acts in furtherance of Google’s anticompetitive scheme took place in California.

17 182. Plaintiff has been harmed by Defendants’ anticompetitive conduct in a manner that
18 the Cartwright Act was intended to prevent. For example, she paid more for Android apps and/or
19 in-app purchases than she would have paid in a competitive market. Plaintiff has also been injured
20 because Google unlawful monopolization of the Android apps and in-app purchases aftermarket has
21 extinguished Plaintiff’s freedom to choose between the Google Play Store and lower cost market
22 alternatives that would have been available had Google not monopolized the market. Plaintiff has
23 also been injured because Google’s establishment and maintenance of monopoly pricing has caused
24 a reduction in the output and supply of Android apps and in-app purchases, which would have been

1 more abundantly available in a competitive market. Plaintiff has suffered and continue to suffer
2 damages and irreparable injury, and such damages and injury will not abate until an injunction
3 ending Google's anticompetitive conduct issues.

4 **COUNT 9: California Cartwright Act Unreasonable Restraints of Trade in Android In-App**
5 **Payment Processing Market**
6 **(Against all Defendants)**

7
8 183. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
9 forth in the rest of this Complaint as if fully set forth herein.

10 184. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. &
11 Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more
12 persons to restrain trade or commerce or to prevent market competition. *See id.* §§ 16720, 16726.

13 185. Under the Cartwright Act, a "combination" is formed when the anticompetitive
14 conduct of a single firm coerces other market participants to involuntarily adhere to the
15 anticompetitive scheme.

16 186. The Android App Distribution Market and Android In-App Payment Processing
17 Market, and, in the alternative, the Android Games Payment Processing Market, are valid antitrust
18 markets.

19 187. Google has monopoly power in the Android In-App Payment Processing Market and,
20 in the alternative, in the Android Games Payment Processing Market.

21 188. Google conditions distribution through the Google Play Store on entering into the
22 standardized DDA described above, including the Developer Program Policies integrated therein.
23 Through certain provisions in these agreements, Google forces app developers to submit to
24 conditions that unreasonably restrain competition in the Android In-App Payment Processing
25 Market.

1 189. Section 3.2 of the DDA requires that Android app developers enter into a separate
2 agreement with Google's payment processor, Defendant Google Payment, to receive payment for
3 apps and content distributed through the Google Play Store. This includes payments related to in-
4 app purchases. Further, Google's Developer Program Policies, compliance with which Section 4.1
5 of the DDA makes obligatory, require that apps distributed through the Google Play Store "must
6 use Google Play In-app Billing [offered by Google Payment] as the method of payment" for in-app
7 purchases. While Google's Policies exclude certain types of transactions from this requirement, such
8 as the purchase of "solely physical products" or of "digital content that may be consumed outside
9 of the app itself," Google expressly and discriminatorily applies its anticompetitive mandate to every
10 "game downloaded on Google Play" and to all purchased "game content."

11 190. These provisions have no legitimate or pro-competitive purpose or effect, and
12 unreasonably restrain competition in the Android In-App Payment Processing Market, and, in the
13 alternative, in the Android Games Payment Processing Market.

14 191. Google's conduct and practices have substantial anticompetitive effects, including
15 increased prices and costs, reduced innovation, poorer customer service and lowered output.

16 192. It is appropriate to bring this action under the Cartwright Act because many of the
17 illegal agreements were made in California and purport to be governed by California law, many
18 affected consumers reside in California, Google has its principal place of business in California and
19 overt acts in furtherance of Google's anticompetitive scheme took place in California.

20 193. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
21 the Cartwright Act was intended to prevent. For example, she paid more for Android apps and/or
22 in-app purchases than she would have paid in a competitive market. Plaintiff has also been injured
23 because Google unlawful monopolization of the Android apps and in-app purchases aftermarket has
24 extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market

1 alternatives that would have been available had Google not monopolized the market. Plaintiff has
2 also been injured because Google's establishment and maintenance of monopoly pricing has caused
3 a reduction in the output and supply of Android apps and in-app purchases, which would have been
4 more abundantly available in a competitive market. Plaintiff has suffered and continue to suffer
5 damages and irreparable injury, and such damages and injury will not abate until an injunction
6 ending Google's anticompetitive conduct issues.

7 **COUNT 10: California Cartwright Act Tying Google Play Store to Google Play Billing**
8 **(Against all Defendants)**

9 194. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
10 forth in the rest of this Complaint as if fully set forth herein.

11 195. Google's acts and practices detailed above violate the Cartwright Act, Cal. Bus. &
12 Prof. Code § 16700 *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more
13 persons to restrain trade or commerce, or to prevent market competition. *See id.* §§ 16720, 16726.

14 196. Under the Cartwright Act, a "combination" is formed when the anticompetitive
15 conduct of a single firm coerces other market participants to involuntarily adhere to the
16 anticompetitive scheme.

17 197. The Cartwright Act also makes it "unlawful for any person to lease or make a sale or
18 contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the
19 State, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the
20 condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in
21 the goods, merchandise, machinery, supplies, commodities, or services of a competitor or
22 competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such
23 condition, agreement or understanding may be to substantially lessen competition or tend to create
24 a monopoly in any line of trade or commerce in any section of the State." *Id.* § 16727.

1 198. As detailed above, Google has unlawfully tied its in-app payment processor, Google
2 Play Billing, to the Google Play Store through its DDAs with app developers and its Developer
3 Program Policies.

4 199. Google has sufficient economic power in the tying market, the Android App
5 Distribution Market, to affect competition in the tied market, the Android In-App Payment
6 Distribution Market. With Google Play Store installed on nearly all Android OS devices and over
7 90% of downloads on Android OS devices being performed by the Google Play Store, Google has
8 overwhelming market power. Google's market power is further evidenced by its ability to extract
9 supra-competitive taxes on the sale of apps through the Google Play Store.

10 200. The availability of the Google Play Store for app distribution is conditioned on the
11 app developer accepting a second product, Google's in-app payment processing services. Google's
12 foreclosure of alternative app distribution channels forces developers to use Google's in-app
13 payment processing services, which Google has expressly made a condition of reaching Android
14 users through its dominant Google Play Store.

15 201. The tying product, Android app distribution, is separate and distinct from the tied
16 product, Android in-app payment processing, because app developers have alternative in-app
17 payment processing options and would prefer to choose among them independently of how an
18 Android app is distributed. Google's unlawful tying arrangement thus ties two separate products
19 that are in separate markets.

20 202. Google's conduct forecloses competition in the Android In-App Payment Processing
21 Market and, in the alternative, in the Android Games Payment Processing Market, affecting a
22 substantial volume of commerce in these Markets.

1 203. Google has thus engaged in a *per se* illegal tying arrangement and the Court does not
2 need to engage in a detailed assessment of the anticompetitive effects of Google's conduct or its
3 purported justifications.

4 204. Even if Google's conduct does not form a *per se* illegal tie, an assessment of the
5 tying arrangement would demonstrate that it is unreasonable under the Cartwright Act, and
6 therefore, illegal.

7 205. Google's acts and practices detailed above unreasonably restrained competition in
8 the Android In-App Payment Processing Market and, in the alternative, in the Android Games
9 Payment Processing Market.

10 206. It is appropriate to bring this action under the Cartwright Act because many of the
11 illegal agreements were made in California and purport to be governed by California law, many
12 affected consumers reside in California, Google has its principal place of business in California, and
13 overt acts in furtherance of Google's anticompetitive scheme took place in California.

14 207. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
15 the Cartwright Act was intended to prevent. For example, she paid more for Android apps and/or
16 in-app purchases than she would have paid in a competitive market. Plaintiff has also been injured
17 because Google's unlawful monopolization of the Android apps and in-app purchases aftermarket
18 has extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
19 alternatives that would have been available had Google not monopolized the market. Plaintiff has
20 also been injured because Google's establishment and maintenance of monopoly pricing has caused
21 a reduction in the output and supply of Android apps and in-app purchases, which would have been
22 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer
23 damages and irreparable injury, and such damages and injury will not abate until an injunction
24 ending Google's anticompetitive conduct issues.

1 **COUNT 11: Arizona Uniform State Antitrust Act (Against all Defendants)**

2 208. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
3 forth in the rest of this Complaint as if fully set forth herein.

4 209. Google's acts and practices detailed above violate the Arizona Uniform State
5 Antitrust Act, Ariz. Rev. Stat. § 44-1401, *et seq.*, which prohibits, *inter alia*, combinations in
6 restraint of, or to monopolize, trade or commerce, *id.* § 44-1402, and monopolization or attempted
7 monopolization of trade or commerce for the purpose of excluding competition or controlling, fixing
8 or maintaining prices, *id.* § 44-1403.

9 210. Google's conduct and practices have substantial anticompetitive effects in Arizona,
10 including increased prices and costs, reduced innovation, poorer customer service, and lowered
11 output.

12 211. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
13 the Arizona Uniform State Antitrust Act was intended to prevent. For example, she paid more for
14 Android apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff
15 has also been injured because Google's unlawful monopolization of the Android apps and in-app
16 purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store
17 and lower cost market alternatives that would have been available had Google not monopolized the
18 market. Plaintiff has also been injured because Google's establishment and maintenance of
19 monopoly pricing has caused a reduction in the output and supply of Android apps and in-app
20 purchases, which would have been more abundantly available in a competitive market. Plaintiff has
21 suffered and continues to suffer damages and irreparable injury, and such damages and injury will
22 not abate until an injunction ending Google's anticompetitive conduct issues.

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1 **COUNT 12: District of Columbia Antitrust Act (Against all Defendants)**

2 212. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
3 forth in the rest of this Complaint as if fully set forth herein.

4 213. Google's acts and practices detailed above violate the District of Columbia Antitrust
5 Act, D.C. Code § 28-4501, *et seq.*, which prohibits, *inter alia*, combinations in restraint of, or to
6 monopolize, trade or commerce, *id.* § 28-4502, and monopolization or attempted monopolization
7 over any part of trade or commerce for the purpose of excluding competition or controlling, fixing
8 or maintaining prices, *id.* § 28-4503.

9 214. Google's conduct and practices have substantial anticompetitive effects in the
10 District of Columbia, including increased prices and costs, reduced innovation, poorer customer
11 service, and lowered output.

12 215. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
13 the District of Columbia Antitrust Act was intended to prevent. For example, she paid more for
14 Android apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff
15 has also been injured because Google's unlawful monopolization of the Android apps and in-app
16 purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store
17 and lower cost market alternatives that would have been available had Google not monopolized the
18 market. Plaintiff has also been injured because Google's establishment and maintenance of
19 monopoly pricing has caused a reduction in the output and supply of Android apps and in-app
20 purchases, which would have been more abundantly available in a competitive market. Plaintiff has
21 suffered and continues to suffer damages and irreparable injury, and such damages and injury will
22 not abate until an injunction ending Google's anticompetitive conduct issues.

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1 **COUNT 13: Hawaii Antitrust Laws (Against all Defendants)**

2 216. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
3 forth in the rest of this Complaint as if fully set forth herein.

4 217. Google's acts and practices detailed above violate Hawaii's antitrust laws, Haw. Rev.
5 Stat. § 480-1, *et seq.*, which prohibit, *inter alia*, combinations in restraint of trade or commerce, *id.* §
6 § 480-4, and monopolization or attempted monopolization of any part of trade or commerce, *id.* §
7 480-9.

8 218. Google's conduct and practices have substantial anticompetitive effects in Hawaii,
9 including increased prices and costs, reduced innovation, poorer customer service, and lowered
10 output.

11 219. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
12 Hawaii's antitrust laws were intended to prevent. For example, she paid more for Android apps
13 and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also been
14 injured because Google's unlawful monopolization of the Android apps and in-app purchases
15 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
16 cost market alternatives that would have been available had Google not monopolized the market.
17 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
18 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
19 would have been more abundantly available in a competitive market. Plaintiff has suffered and
20 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
21 an injunction ending Google's anticompetitive conduct issues.

22 **COUNT 14: Iowa Competition Law (Against all Defendants)**

23 220. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
24 forth in the rest of this Complaint as if fully set forth herein.

1 221. Google's acts and practices detailed above violate the Iowa Competition Law, Iowa
2 Code § 553.1, *et seq.*, which prohibits, *inter alia*, combinations to restrain or monopolize trade or
3 commerce, *id.* § 553.4, and the monopolization or attempted monopolization of a market for the
4 purpose of excluding competition or of controlling, fixing, or maintaining prices, *id.* § 553.5.

5 222. Google's conduct and practices have substantial anticompetitive effects in Iowa,
6 including increased prices and costs, reduced innovation, poorer customer service, and lowered
7 output.

8 223. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
9 the Iowa Competition Law was intended to prevent. For example, she paid more for Android apps
10 and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also been
11 injured because Google's unlawful monopolization of the Android apps and in-app purchases
12 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
13 cost market alternatives that would have been available had Google not monopolized the market.
14 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
15 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
16 would have been more abundantly available in a competitive market. Plaintiff has suffered and
17 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
18 an injunction ending Google's anticompetitive conduct issues.

COUNT 15: Kansas Restraint of Trade Act (Against all Defendants)

20 224. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
21 forth in the rest of this Complaint as if fully set forth herein.

22 225. Google's acts and practices detailed above violate the Kansas Restraint of Trade Act,
23 Kan. Stat. § 50-101, *et seq.*, which prohibits, *inter alia*, combinations to create or carry out

1 restrictions in trade or commerce, increase the price of merchandise, or prevent competition in the
2 sale of merchandise, *id.*

3 226. Google's conduct and practices have substantial anticompetitive effects in Kansas,
4 including increased prices and costs, reduced innovation, poorer customer service, and lowered
5 output.

6 227. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
7 the Kansas Restraint of Trade Act was intended to prevent. For example, she paid more for Android
8 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also
9 been injured because Google's unlawful monopolization of the Android apps and in-app purchases
10 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
11 cost market alternatives that would have been available had Google not monopolized the market.
12 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
13 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
14 would have been more abundantly available in a competitive market. Plaintiff has suffered and
15 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
16 an injunction ending Google's anticompetitive conduct issues.

17 **COUNT 16: Maine Monopoly & Profiteering Laws (Against all Defendants)**

18 228. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
19 forth in the rest of this Complaint as if fully set forth herein.

20 229. Google's acts and practices detailed above violate Maine's monopoly and
21 profiteering laws, Me. Rev. Stat. tit. 10, § 1101, *et seq.*, which prohibit, *inter alia*, combinations in
22 restraint of trade or commerce, *id.*, and the monopolization or attempted monopolization of any part
23 of trade or commerce, *id.* § 1102.

230. Google's conduct and practices have substantial anticompetitive effects in Maine, including increased prices and costs, reduced innovation, poorer customer service, and lowered output.

4 231. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
5 Maine's monopoly and profiteering laws were intended to prevent. For example, she paid more for
6 Android apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff
7 has also been injured because Google's unlawful monopolization of the Android apps and in-app
8 purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store
9 and lower cost market alternatives that would have been available had Google not monopolized the
10 market. Plaintiff has also been injured because Google's establishment and maintenance of
11 monopoly pricing has caused a reduction in the output and supply of Android apps and in-app
12 purchases, which would have been more abundantly available in a competitive market. Plaintiff has
13 suffered and continues to suffer damages and irreparable injury, and such damages and injury will
14 not abate until an injunction ending Google's anticompetitive conduct issues.

COUNT 17: Maryland Antitrust Laws (Against all Defendants)

16 232. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
17 forth in the rest of this Complaint as if fully set forth herein.

18 233. Google's acts and practices detailed above violate Maryland's antitrust laws, Md.
19 Code, Com. Law § 11-201, *et seq.*, which prohibit, *inter alia*, combinations that unreasonably
20 restrain trade or commerce, *id.* § 11-204, and the monopolization or attempted monopolization of
21 any part of the trade or commerce for the purpose of excluding competition or of controlling, fixing,
22 or maintaining prices in trade or commerce, *id.*

1 234. Google's conduct and practices have substantial anticompetitive effects in Maryland,
2 including increased prices and costs, reduced innovation, poorer customer service, and lowered
3 output.

4 235. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
5 the Maryland antitrust laws were intended to prevent. For example, she paid more for Android apps
6 and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also been
7 injured because Google's unlawful monopolization of the Android apps and in-app purchases
8 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
9 cost market alternatives that would have been available had Google not monopolized the market.
10 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
11 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
12 would have been more abundantly available in a competitive market. Plaintiff has suffered and
13 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
14 an injunction ending Google's anticompetitive conduct issues.

15 **COUNT 18: Massachusetts consumer protection laws (Against all Defendants)**

16 236. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
17 forth in the rest of this Complaint as if fully set forth herein.

18 237. Google's acts and practices detailed above violate Massachusetts' consumer
19 protection laws, Mass. Gen. Laws ch. 93A, § 1, *et seq.*, which prohibit, *inter alia*, unfair methods of
20 competition and unfair or deceptive acts or practices in the conduct of any trade or commerce, *id.* §
21 2.

22 238. Google's conduct and practices have substantial anticompetitive effects in
23 Massachusetts, including increased prices and costs, reduced innovation, poorer customer service,
24 and lowered output.

1 239. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
2 the Massachusetts consumer protection laws were intended to prevent. For example, she paid more
3 for Android apps and/or in-app purchases than she would have paid in a competitive market.
4 Plaintiff has also been injured because Google's unlawful monopolization of the Android apps and
5 in-app purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google
6 Play Store and lower cost market alternatives that would have been available had Google not
7 monopolized the market. Plaintiff has also been injured because Google's establishment and
8 maintenance of monopoly pricing has caused a reduction in the output and supply of Android apps
9 and in-app purchases, which would have been more abundantly available in a competitive market.
10 Plaintiff has suffered and continues to suffer damages and irreparable injury, and such damages and
11 injury will not abate until an injunction ending Google's anticompetitive conduct issues.

COUNT 19: Michigan Antitrust Reform Act (Against all Defendants)

13 240. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
14 forth in the rest of this Complaint as if fully set forth herein.

15 241. Google's acts and practices detailed above violate the Michigan Antitrust Reform
16 Act, Mich. Comp. Laws § 445.771, *et seq.*, which prohibits, *inter alia*, combinations in restraint of,
17 or to monopolize, trade or commerce, *id.* § 445.772, and the establishment or attempted
18 establishment of a monopoly of trade or commerce for the purpose of excluding or limiting
19 competition or controlling, fixing, or maintaining prices, *id.* § 445.773.

20 242. Google's conduct and practices have substantial anticompetitive effects in Michigan,
21 including increased prices and costs, reduced innovation, poorer customer service, and lowered
22 output.

23 243. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
24 Michigan Antitrust Reform Act was intended to prevent. For example, she paid more for Android

1 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also
2 been injured because Google's unlawful monopolization of the Android apps and in-app purchases
3 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
4 cost market alternatives that would have been available had Google not monopolized the market.
5 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
6 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
7 would have been more abundantly available in a competitive market. Plaintiff has suffered and
8 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
9 an injunction ending Google's anticompetitive conduct issues.

10 **COUNT 20: Minnesota Antitrust Law of 1971 (Against all Defendants)**

11 244. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
12 forth in the rest of this Complaint as if fully set forth herein.

13 245. Google's acts and practices detailed above violate the Minnesota Antitrust Law of
14 1971, Minn. Stat. § 325D.49, *et seq.*, which prohibits, *inter alia*, combinations in unreasonable
15 restraint of trade or commerce, *id.* § 325D.51, and the establishment or attempted establishment of
16 a monopoly over any part of trade or commerce for the purpose of affecting competition or
17 controlling, fixing, or maintaining prices, *id.* § 325D.52.

18 246. Google's conduct and practices have substantial anticompetitive effects in
19 Minnesota, including increased prices and costs, reduced innovation, poorer customer service, and
20 lowered output.

21 247. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
22 Minnesota Antitrust Law of 1971 was intended to prevent. For example, she paid more for Android
23 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also
24 been injured because Google's unlawful monopolization of the Android apps and in-app purchases

1 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
2 cost market alternatives that would have been available had Google not monopolized the market.
3 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
4 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
5 would have been more abundantly available in a competitive market. Plaintiff has suffered and
6 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
7 an injunction ending Google's anticompetitive conduct issues.

8 **COUNT 21: Mississippi Antitrust Laws (Against all Defendants)**

9 248. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
10 forth in the rest of this Complaint as if fully set forth herein.

11 249. Google's acts and practices detailed above violate Mississippi's antitrust laws, Miss.
12 Code. § 75-21-1, *et seq.*, which prohibit, *inter alia*, combinations inimical to the public welfare that
13 restrain trade, increase the price of a commodity, or reduce the production of a commodity, *id.*

14 250. Google's conduct and practices have substantial anticompetitive effects in
15 Mississippi, including increased prices and costs, reduced innovation, poorer customer service, and
16 lowered output.

17 251. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
18 Mississippi's antitrust laws were intended to prevent. For example, she paid more for Android apps
19 and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also been
20 injured because Google's unlawful monopolization of the Android apps and in-app purchases
21 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
22 cost market alternatives that would have been available had Google not monopolized the market.
23 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
24 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which

1 would have been more abundantly available in a competitive market. Plaintiff has suffered and
2 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
3 an injunction ending Google's anticompetitive conduct issues.

4 **COUNT 22: Nebraska Junkin Act (Against all Defendants)**

5 252. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
6 forth in the rest of this Complaint as if fully set forth herein.

7 253. Google's acts and practices detailed above violate the Junkin Act, Neb. Rev. Stat. §
8 59-802, *et seq.*, which prohibits, *inter alia*, the combination of resources by two or more persons to
9 restrain trade or commerce, *id.* § 59-802, and monopolization or attempted monopolization of any
10 part of trade or commerce, *id.* § 16726.

11 254. Google's conduct and practices have substantial anticompetitive effects in Nebraska,
12 including increased prices and costs, reduced innovation, poorer customer service, and lowered
13 output.

14 255. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
15 Nebraska's Junkin Act was intended to prevent. For example, she paid more for Android apps and/or
16 in-app purchases than she would have paid in a competitive market. Plaintiff has also been injured
17 because Google's unlawful monopolization of the Android apps and in-app purchases aftermarket
18 has extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
19 alternatives that would have been available had Google not monopolized the market. Plaintiff has
20 also been injured because Google's establishment and maintenance of monopoly pricing has caused
21 a reduction in the output and supply of Android apps and in-app purchases, which would have been
22 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer
23 damages and irreparable injury, and such damages and injury will not abate until an injunction
24 ending Google's anticompetitive conduct issues.

1 **COUNT 23: Nevada Unfair Trade Practices Act (Against all Defendants)**

2 256. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
3 forth in the rest of this Complaint as if fully set forth herein.

4 257. Google's acts and practices detailed above violate the Nevada Unfair Trade Practices
5 Act, Nev. Rev. Stat. § 598A.010, et seq., which prohibits, *inter alia*, the monopolization or attempted
6 monopolization of any part of trade or commerce, *id.* § 598A.060, and tying arrangements,
7 consisting of contracts in which the seller or lessor conditions the sale or lease of commodities or
8 services on the purchase or leasing of another commodity or service, *id.*

9 258. Google's conduct and practices have substantial anticompetitive effects in Nevada,
10 including increased prices and costs, reduced innovation, poorer customer service, and lowered
11 output.

12 259. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
13 Nevada's Unfair Trade Practices Act was intended to prevent. For example, she paid more for
14 Android apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff
15 has also been injured because Google's unlawful monopolization of the Android apps and in-app
16 purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store
17 and lower cost market alternatives that would have been available had Google not monopolized the
18 market. Plaintiff has also been injured because Google's establishment and maintenance of
19 monopoly pricing has caused a reduction in the output and supply of Android apps and in-app
20 purchases, which would have been more abundantly available in a competitive market. Plaintiff has
21 suffered and continues to suffer damages and irreparable injury, and such damages and injury will
22 not abate until an injunction ending Google's anticompetitive conduct issues.

23

24

1 **COUNT 24: New Hampshire Consumer Protection Act (Against all Defendants)**

2 260. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
3 forth in the rest of this Complaint as if fully set forth herein.

4 261. Google's acts and practices detailed above violate the New Hampshire Consumer
5 Protection Act, N.H. Rev. Stat. § 358-A:1, *et seq.*, which prohibits, *inter alia*, the pricing of goods
6 or services in a manner that tends to create or maintain a monopoly, or otherwise harm competition,
7 *id.* § 358-A:2.

8 262. Google's conduct and practices have substantial anticompetitive effects in New
9 Hampshire, including increased prices and costs, reduced innovation, poorer customer service, and
10 lowered output.

11 263. Plaintiff has been harmed by Defendants' anti-competitive conduct in a manner that
12 the New Hampshire Consumer Protection Act was intended to prevent. For example, she paid more
13 for Android apps and/or in-app purchases than she would have paid in a competitive market.
14 Plaintiff has also been injured because Google's unlawful monopolization of the Android apps and
15 in-app purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google
16 Play Store and lower cost market alternatives that would have been available had Google not
17 monopolized the market. Plaintiff has also been injured because Google's establishment and
18 maintenance of monopoly pricing has caused a reduction in the output and supply of Android apps
19 and in-app purchases, which would have been more abundantly available in a competitive market.
20 Plaintiff has suffered and continues to suffer damages and irreparable injury, and such damages and
21 injury will not abate until an injunction ending Google's anti-competitive conduct issues.

22 **COUNT 25: New Mexico Antitrust Act (Against all Defendants)**

23 264. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
24 forth in the rest of this Complaint as if fully set forth herein.

1 265. Google's acts and practices detailed above violate the New Mexico Antitrust Act,
2 N.M. Stat. § 57-1-1, *et seq.*, which prohibits, *inter alia*, the monopolization or attempted
3 monopolization of any part of trade or commerce, *id.* § 57-1-2, and combinations in restraint of trade
4 or commerce, *id.* § 57-1-1.

5 266. Google's conduct and practices have substantial anticompetitive effects in New
6 Mexico, including increased prices and costs, reduced innovation, poorer customer service, and
7 lowered output.

8 267. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
9 the New Mexico Antitrust Act was intended to prevent. For example, she paid more for Android
10 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also
11 been injured because Google's unlawful monopolization of the Android apps and in-app purchases
12 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
13 cost market alternatives that would have been available had Google not monopolized the market.
14 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
15 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
16 would have been more abundantly available in a competitive market. Plaintiff has suffered and
17 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
18 an injunction ending Google's anticompetitive conduct issues.

COUNT 26: New York Donnelly Act (Against all Defendants)

20 268. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
21 forth in the rest of this Complaint as if fully set forth herein.

22 269. Google's acts and practices detailed above violate New York's Donnelly Act, N.Y.
23 Gen. Bus. Law § 340, *et seq.*, which prohibits, *inter alia*, monopoly in the conduct of any business,
24 trade or commerce or in the furnishing of any service, *id.* § 340.

270. Google's conduct and practices have substantial anticompetitive effects in New York, including increased prices and costs, reduced innovation, poorer customer service, and lowered output.

4 271. Plaintiff has been harmed by Defendants' anti-competitive conduct in a manner that
5 New York's Donnelly Act was intended to prevent. For example, she paid more for Android apps
6 and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also been
7 injured because Google's unlawful monopolization of the Android apps and in-app purchases
8 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
9 cost market alternatives that would have been available had Google not monopolized the market.
10 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
11 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
12 would have been more abundantly available in a competitive market. Plaintiff has suffered and
13 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
14 an injunction ending Google's anti-competitive conduct issues.

COUNT 27: North Carolina Antitrust Laws (Against all Defendants)

16 272. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
17 forth in the rest of this Complaint as if fully set forth herein.

18 273. Google's acts and practices detailed above violate North Carolina's antitrust laws,
19 N.C. Gen. Stat. § 75-1, *et seq.*, which prohibit, *inter alia*, combinations in restraint of trade or
20 commerce, *id.* § 75-1, and the monopolization or attempted monopolization of any part of trade or
21 commerce, *id.* § 75-2.1

1 274. Google's conduct and practices have substantial anticompetitive effects in North
2 Carolina, including increased prices and costs, reduced innovation, poorer customer service, and
3 lowered output.

4 275. Plaintiffs have been harmed by Defendants' anti-competitive conduct in a manner
5 that the North Carolina antitrust laws were intended to prevent. For example, she paid more for
6 Android apps and/or in-app purchases than she would have paid in a competitive market. Plaintiffs
7 have also been injured because Google's unlawful monopolization of the Android apps and in-app
8 purchases aftermarket has extinguished Plaintiffs' freedom to choose between the Google Play Store
9 and lower cost market alternatives that would have been available had Google not monopolized the
10 market. Plaintiffs have also been injured because Google's establishment and maintenance of
11 monopoly pricing has caused a reduction in the output and supply of Android apps and in-app
12 purchases, which would have been more abundantly available in a competitive market. Plaintiffs
13 have suffered and continues to suffer damages and irreparable injury, and such damages and injury
14 will not abate until an injunction ending Google's anti-competitive conduct issues.

15 **COUNT 28: North Dakota Uniform State Antitrust Act (Against all Defendants)**

16 276. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
17 forth in the rest of this Complaint as if fully set forth herein.

18 277. Google's acts and practices detailed above violate the North Dakota Uniform State
19 Antitrust Act, N.D. Cent. Code § 51-08.1-01, *et seq.*, which prohibits, *inter alia*, combinations in
20 restraint of, or to monopolize, trade or commerce, *id.* § 51-08.1-02, and the establishment,
21 maintenance, or use of a monopoly, or an attempt to establish a monopoly, of trade or commerce in
22 a relevant market by any person, for the purpose of excluding competition or controlling, fixing, or
23 maintaining prices, *id.* § 51-08.1-03.

1 278. Google's conduct and practices have substantial anticompetitive effects in North
2 Dakota, including increased prices and costs, reduced innovation, poorer customer service, and
3 lowered output.

4 279. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
5 the North Dakota Uniform State Antitrust Act was intended to prevent. For example, she paid more
6 for Android apps and/or in-app purchases than she would have paid in a competitive market.
7 Plaintiff has also been injured because Google's unlawful monopolization of the Android apps and
8 in-app purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google
9 Play Store and lower cost market alternatives that would have been available had Google not
10 monopolized the market. Plaintiff has also been injured because Google's establishment and
11 maintenance of monopoly pricing has caused a reduction in the output and supply of Android apps
12 and in-app purchases, which would have been more abundantly available in a competitive market.
13 Plaintiff has suffered and continues to suffer damages and irreparable injury, and such damages and
14 injury will not abate until an injunction ending Google's anticompetitive conduct issues.

COUNT 29: Oregon Antitrust Law (Against all Defendants)

16 280. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
17 forth in the rest of this Complaint as if fully set forth herein.

18 281. Google's acts and practices detailed above violate the Oregon Antitrust Law, Or.
19 Rev. Stat. § 646.705, *et seq.*, which prohibits, *inter alia*, combinations in restraint of trade or
20 commerce, *id.* § 646.725, and monopolization or attempted monopolization of any part of trade or
21 commerce, *id.* § 646.730.

22 282. Google's conduct and practices have substantial anticompetitive effects in Oregon,
23 including increased prices and costs, reduced innovation, poorer customer service, and lowered
24 output.

1 283. Plaintiff has been harmed by Defendants' anti-competitive conduct in a manner that
2 the Oregon Antitrust Law was intended to prevent. For example, she paid more for Android apps
3 and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also been
4 injured because Google's unlawful monopolization of the Android apps and in-app purchases
5 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
6 cost market alternatives that would have been available had Google not monopolized the market.
7 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
8 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
9 would have been more abundantly available in a competitive market. Plaintiff has suffered and
10 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
11 an injunction ending Google's anti-competitive conduct issues.

COUNT 30: South Dakota Antitrust Laws (Against all Defendants)

13 284. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
14 forth in the rest of this Complaint as if fully set forth herein.

15 285. Google's acts and practices detailed above violate South Dakota's antitrust laws,
16 .S.D. Codified Laws § 37-1-3.1, *et seq.*, which prohibit, *inter alia*, combinations in restraint of trade
17 or commerce, *id.*, and monopolization or attempted monopolization of trade or commerce, *id.* § 37-
18 1-3.2.

19 286. Google's conduct and practices have substantial anticompetitive effects in South
20 Dakota, including increased prices and costs, reduced innovation, poorer customer service, and
21 lowered output.

22 287. Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
23 South Dakota's antitrust laws were intended to prevent. For example, she paid more for Android
24 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also

1 been injured because Google's unlawful monopolization of the Android apps and in-app purchases
2 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
3 cost market alternatives that would have been available had Google not monopolized the market.
4 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
5 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
6 would have been more abundantly available in a competitive market. Plaintiff has suffered and
7 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
8 an injunction ending Google's anticompetitive conduct issues.

COUNT 31: Tennessee Trade Practices Act (Against all Defendants)

10 288. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
11 forth in the rest of this Complaint as if fully set forth herein.

12 289. Google's acts and practices detailed above violate the Tennessee Trade Practices Act,
13 Tenn. Code § 47-25-101, *et seq.*, which prohibits, *inter alia*, combinations designed, or which tend,
14 to advance, reduce, or control the price or the cost to the producer or the consumer of any such
15 product or article. *id.*

16 290. Google's conduct and practices have substantial anticompetitive effect in Tennessee,
17 including increased prices and costs, reduced innovation, poorer customer service, and lowered
18 output.

19 Plaintiff has been harmed by Defendants' anticompetitive conduct in a manner that
20 the Tennessee Trade Practices Act was intended to prevent. For example, she paid more for Android
21 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff has also
22 been injured because Google's unlawful monopolization of the Android apps and in-app purchases
23 aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store and lower
24 cost market alternatives that would have been available had Google not monopolized the market.

1 Plaintiff has also been injured because Google's establishment and maintenance of monopoly
2 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
3 would have been more abundantly available in a competitive market. Plaintiff has suffered and
4 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
5 an injunction ending Google's anticompetitive conduct issues.

6 **COUNT 32: Utah Antitrust Act (Against all Defendants)**

7 292. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
8 forth in the rest of this Complaint as if fully set forth herein.

9 293. Google's acts and practices detailed above violate the Utah Antitrust Act, Utah Code
10 § 76-10-3101, *et seq.*, which prohibit, *inter alia*, combinations in restraint of trade or commerce, *id.*
11 § 76-10-3104, and monopolization or attempted monopolization of any part of trade or commerce,
12 *id.*

13 294. Google's conduct and practices have substantial anticompetitive effect in Utah,
14 including increased prices and costs, reduced innovation, poorer customer service, and lowered
15 output.

16 295. Plaintiff has been harmed by Defendants' anti-competitive conduct in a manner that
17 the Utah Antitrust Act was intended to prevent. For example, she paid more for Android apps and/or
18 in-app purchases than she would have paid in a competitive market. Plaintiff has also been injured
19 because Google's unlawful monopolization of the Android apps and in-app purchases aftermarket
20 has extinguished Plaintiff's freedom to choose between the Google Play Store and lower cost market
21 alternatives that would have been available had Google not monopolized the market. Plaintiff has
22 also been injured because Google's establishment and maintenance of monopoly pricing has caused
23 a reduction in the output and supply of Android apps and in-app purchases, which would have been
24 more abundantly available in a competitive market. Plaintiff has suffered and continues to suffer

1 damages and irreparable injury, and such damages and injury will not abate until an injunction
2 ending Google's anti-competitive conduct issues.

3 **COUNT 33: Vermont Consumer Protection Laws (Against all Defendants)**

4 296. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
5 forth in the rest of this Complaint as if fully set forth herein.

6 297. Google's acts and practices detailed above violate Vermont's consumer protection
7 laws, Vt. Stat. tit. 9, § 2451, *et seq.*, which prohibit, *inter alia*, all unfair methods of competition in
8 commerce, *id.* § 2453.

9 298. Google's conduct and practices have substantial anticompetitive effects in Vermont,
10 including increased prices and costs, reduced innovation, poorer customer service, and lowered
11 output.

12 299. Plaintiff has been harmed by Defendants' anti-competitive conduct in a manner that
13 the Vermont consumer protection laws were intended to prevent. For example, she paid more for
14 Android apps and/or in-app purchases than she would have paid in a competitive market. Plaintiff
15 has also been injured because Google's unlawful monopolization of the Android apps and in-app
16 purchases aftermarket has extinguished Plaintiff's freedom to choose between the Google Play Store
17 and lower cost market alternatives that would have been available had Google not monopolized the
18 market. Plaintiff has also been injured because Google's establishment and maintenance of
19 monopoly pricing has caused a reduction in the output and supply of Android apps and in-app
20 purchases, which would have been more abundantly available in a competitive market. Plaintiff has
21 suffered and continues to suffer damages and irreparable injury, and such damages and injury will
22 not abate until an injunction ending Google's anti-competitive conduct issues.

23

1 **COUNT 34: Wisconsin Trade Regulations (Against all Defendants)**

2 300. Plaintiff restates, re-alleges, and incorporates by reference each of the allegations set
3 forth in the rest of this Complaint as if fully set forth herein.

4 301. Google's acts and practices detailed above violate Wisconsin's trade regulations,
5 Wis. Stat. Ann. § 133.01, *et seq.*, which prohibit, *inter alia*, combinations in restraint of trade or
6 commerce, *id.* § 133.03, and monopolization or attempted monopolization of any part of trade or
7 commerce, *id.*

8 302. Google's conduct and practices have substantial effects in Wisconsin, including
9 increased prices and costs, reduced innovation, poorer customer service, and lowered output.

10 303. Plaintiffs have been harmed by Defendants' anti-competitive conduct in a manner
11 that Wisconsin's trade regulations were intended to prevent. For example, she paid more for Android
12 apps and/or in-app purchases than she would have paid in a competitive market. Plaintiffs have also
13 been injured because Google's unlawful monopolization of the Android apps and in-app purchases
14 aftermarket has extinguished Plaintiffs' freedom to choose between the Google Play Store and lower
15 cost market alternatives that would have been available had Google not monopolized the market.
16 Plaintiffs have also been injured because Google's establishment and maintenance of monopoly
17 pricing has caused a reduction in the output and supply of Android apps and in-app purchases, which
18 would have been more abundantly available in a competitive market. Plaintiffs have suffered and
19 continues to suffer damages and irreparable injury, and such damages and injury will not abate until
20 an injunction ending Google's anti-competitive conduct issues.

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PRAAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in favor of Plaintiff and against Defendants:

A. Permanently enjoining Defendants from monopolizing or attempting to monopolize the Android applications aftermarket;

B. Awarding Plaintiffs and the Class treble damages for injuries caused by Defendants' violations of the federal antitrust laws, California's Cartwright Act, the Arizona Uniform State Antitrust Act, the District of Columbia Antitrust Act, the Hawaii antitrust laws, the Iowa Competition Law, the Kansas Restraint of Trade Act, Maine's monopoly and profiteering laws, Maryland's antitrust laws, Massachusetts' consumer protection laws, the Michigan Antitrust Reform Act, the Minnesota Antitrust Law of 1971, the Mississippi antitrust laws, Nebraska's Junkin Act, the Nevada Unfair Trade Practices Act, the New Hampshire Consumer Protection Act, the New Mexico Antitrust Act, New York's Donnelly Act, North Carolina's antitrust laws, the North Dakota Uniform State Antitrust Act, the Oregon Antitrust Law, South Dakota's antitrust laws, the Tennessee Trade Practices Act, the Utah Antitrust Act, Vermont's consumer protection laws, and Wisconsin's trade regulations;

- C. Awarding Plaintiff and the Class reasonable attorneys' fees and costs; and
- D. Granting such other and further relief as the Court may deem just and proper.

Jury Trial Demand

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff demand a jury trial of all issues so triable.

1 Dated: August 16, 2020
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4

5 s/ Michael E. Klenov
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15 *Attorneys for Plaintiff and the Proposed Classes*

16 UNITED STATES DISTRICT COURT
17 NORTHERN DISTRICT OF CALIFORNIA
18 SAN JOSE DIVISION

19 PURE SWEAT BASKETBALL, INC., an
20 Illinois corporation, on behalf of itself and all
others similarly situated,

21 Plaintiff,

22 v.

23 GOOGLE LLC, a Delaware limited liability
company; GOOGLE IRELAND
24 LIMITED; GOOGLE COMMERCE
LIMITED; GOOGLE ASIA PACIFIC
PTE. LTD.; and GOOGLE
25 PAYMENT CORP.,

26 Defendants.

27 No.

28 CLASS ACTION COMPLAINT

COMPLAINT FOR VIOLATION OF
THE SHERMAN ACT AND
CALIFORNIA UNFAIR COMPETITION
LAW

DEMAND FOR JURY TRIAL OF
ALL ISSUES SO TRIABLE

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For its suit against defendant Google LLC, Google Ireland Limited, Google Commerce Limited, Google Asia Pacific PTE. Ltd. and Google Payment Corp. (collectively, Google), plaintiff, on its own behalf and that of all similarly situated U.S. Android OS application developers, alleges as follows:

I. INTRODUCTION

1. Native applications—apps of various sorts programmed for and downloaded to a mobile device—bring smartphones and tablets to life. In turn, add-ons for apps—items such as consumables (for example, extra lives in an adventure game), or subscriptions for full-fledged mobile productivity apps—make apps more fun or useful. Developers, with their ingenuity, training, investment, and hard work, create these apps and extras. And certainly there are many device users to buy them. As of June 2019, for example, 81% of Americans owned smartphones, and 52% owned tablets.¹ And so the two dominant (albeit not mutually competitive) stores—Google Play for Android Operating System (OS) products, and the App Store for Apple iOS products—generate billions of dollars in annual revenue for their owners, Apple Inc. and Google, respectively.² And what a system it is: because apps for iOS and Android devices are incompatible,³ with all the barriers and switching costs entailed, these two corporate giants can split the lucrative mobile apps world neatly between them, with enormous ongoing profits for each.

¹ <http://www.pewinternet.org/fact-sheet/mobile/> (last accessed Aug. 15, 2020).

² See, e.g., <https://www.statista.com/statistics/296226/annual-apple-app-store-revenue/> (“In the last reported year, customers spent an estimated 54.2 billion U.S. dollars on in-app purchases, subscriptions, and premium apps in the Apple App store. (last accessed Aug. 15, 2020); <https://www.statista.com/statistics/444476/google-play-annual-revenue/#:~:text=This%20statistic%20the%20worldwide%20app,spending%20in%20the%20previous%20year.> (reporting study indicating that Google Play spending in 2019 was some \$29.3 billion, which would translate to roughly \$9.76 billion, based on the 30% Google revenue share discussed below) (last accessed Aug. 15, 2020). Alphabet, Google’s parent, reported in its 10-K for 2019 that “other revenue,” including that generated from Google Play, Google hardware, and YouTube subscriptions, amounted to \$17.014 billion for 2019. (https://abc.xyz/investor/static/pdf/20200204_alphabet_10K.pdf?cache=cdd6dbf (Alphabet 2019 10-K at 32) (last accessed Aug. 15, 2020).)

These are global figures. Neither Apple nor Google publishes U.S. figures.

³ <https://yourbusiness.azcentral.com/apple-apps-compatible-android-20369.html> (last accessed Aug. 15, 2020).

1 2. Because each store operates in its own discrete sphere, neither places any competitive
 2 pressure on the other, including as to the prices that Google charges developers for app distribution
 3 services and in-app services, the latter of which primarily entails the processing of consumers'
 4 payments for add-ons, including subscriptions, that they purchase via apps distributed through
 5 Google Play.

6 3. This suit concerns Google Play, Google's store for Android OS apps, and the in-app
 7 add-ons or other digital products, including subscriptions, that developers make available for sale via
 8 their apps.⁴ It concerns Google's improper attainment and maintenance of a monopoly in the U.S.
 9 market for Android OS app stores and distribution services. And it concerns Google's improper
 10 attainment and maintenance of a monopoly in the U.S. market for in-app product distribution
 11 services, which services consist primarily of payment processing for items purchased in-app. It
 12 concerns the harm caused by Google's ongoing abuse of its market power, including the exclusion of
 13 competition, the stifling of innovation, the inhibition of consumer choice, and Google's imposition
 14 on app developers of a supracompetitive 30% transaction fee.⁵

15 4. In fact, the CEO of Google's corporate parent, Alphabet, has admitted that Google's
 16 supracompetitive transaction fee is anything but an outcome of competition. Instead, it has "been the
 17 industry standard"—in other words, it is what Google's fellow monopolist Apple imposes in its
 18 parallel, closed iOS universe, so Google imposes it its own Android sphere. And as plaintiff will
 19 demonstrate, Google's transaction fees have remained unlawfully high for all these years because
 20 Google has willfully—and effectively—excluded competition for developer services in its discrete
 21 Android universe.⁶

22
 23
 24 ⁴ See, e.g., <https://play.google.com/store?hl=en> (Google Play web page) (last accessed Aug. 15,
 25 2020).

26 ⁵ This is the default rate. See n.22 for a description of a variation for certain subscription
 27 payments made via Google's in-app purchase mechanism.

28 ⁶ Alphabet Inc. (Goog) (Google) Q4 2018 Earnings Conf. Call Transcript, available at:
<https://www.fool.com/earnings/call-transcripts/2019/02/04/alphabet-inc-goog-googl-q4-2018-earnings-conference.aspx> (last accessed Aug. 15, 2020).

1 **Acquisition of monopoly (or monopsony) power in Android app and in-app markets**

2 5. Google's Android OS⁷ is one of the two dominant mobile device operating systems.⁸
 3 Google Play is the 1,000-pound gorilla of app providers to the many tens of millions of Android OS
 4 device consumers. While Google does not publish its share among app stores for the Android
 5 mobile operating system, in the European Economic Area, it's at "more than 90%."⁹

6 6. But Google has not attained and maintained such dominance because its app store is
 7 somehow unique or better than any potential competition. Rather, as demonstrated below,¹⁰ Google
 8 has attained and maintained monopoly status in the U.S. market for Android OS app stores through a
 9 series of anticompetitive contracts, strategic abuses of its dominance in other¹¹ Android software
 10 applications, deficits in consumer knowledge and information, and the cultivation and exploitation of
 11 device users' fear of malware.

12 7. First, Google has attained monopoly status in the U.S. market for Android OS app
 13 stores in part by bundling the Google Play store with its other must-have apps (themselves made
 14 must-have by Google's forced-bundling practices). If a manufacturer of an Android OS device
 15 wanted (or wants) to pre-install the popular YouTube or Google Maps apps on devices sold in the
 16 U.S., it has to take the Google Play store as well. This results in the pre-installation of Google Play
 17 on tens of millions of U.S. devices every year.¹² And of course, the ubiquity of these pre-

18
 19 ⁷ See Alphabet's (Google's parent) 2017 10-K,
 20 https://abc.xyz/investor/pdf/20171231_alphabet_10K.pdf, at 3 (referring to Google's acquisition of
 21 Android, and referring to Android as one of its "core products")

22 ⁸ The other is Apple's iOS. In July 2020, Android's U.S. market share was at 41.03%, versus
 23 58.78% for iOS. (<http://gs.statcounter.com/os-market-share/mobile/united-states-of-america> (last
 24 accessed Aug. 15, 2020).)

25 ⁹ https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581 (last accessed Aug. 15,
 26 2020).

27 ¹⁰ See Secs. IV.F-IV.H, *infra*.

28 ¹¹ Google Play is itself a software application, known in the instant context as a client. See
 29 [https://en.wikipedia.org/wiki/Client_\(computing\)#:%~:text=In%20computing%2C%20a%20client%20is,by%20way%20of%20a%20network](https://en.wikipedia.org/wiki/Client_(computing)#:%~:text=In%20computing%2C%20a%20client%20is,by%20way%20of%20a%20network). (last accessed Aug. 15, 2020).

30 ¹² For example, one study indicates that at least 27.5 million Android devices were sold in the
 31 U.S. in Q3 2017. (See Data 29.5 Million US Smartphone Shipments in Q3, 2017, *Android*
 32 Headlines, available at: <https://www.androidheadlines.com/2017/11/data-39-5-million-us-smartphone-shipments-in-q3-2017.html> (last accessed Aug. 15, 2020).) Samsung, LG, ZTE, and
 33 Motorola alone sold 23.5 million of these devices. (*Id.*) And each of these manufacturers preloads

1 installations only reinforces Google Play's status as the perceived official app store for Android
 2 apps.

3 8. *Second*, Google maintains and reinforces its monopoly status in the field by banning
 4 the distribution of other Android app-sale clients in Google Play. For example, Amazon runs an app
 5 store for Android OS apps, but there is no easy or readily available way for the typical Android OS
 6 device owner to buy anything from it. Google's practices require the vast majority of users to
 7 sideload¹³ the Amazon Appstore by locating the client online; figuring out the sideload process; and
 8 changing a security setting on his or her device that allows a practice that Google, as the owner of the
 9 standard Android operating system, strongly discourages (enabling the ominous-sounding "Unknown
 10 sources" download capability). As Google well knows, hardly any members of its enormous Google
 11 Play install base will go to this trouble, if they even know such a process may be available. And still
 12 others will heed Google's security warnings and not go through with the installation.¹⁴ No wonder
 13 app developers feel bound to sell in Google Play, whatever the cost.

14 9. *Third*, by so-called anti-fragmentation contractual terms, Google prohibits licensees
 15 of apps such as YouTube and Google Play from manufacturing or selling even a single smart device
 16 using a so-called forked version, *i.e.*, a non-Google variant, of Android.¹⁵ Amazon is the author and
 17 distributor of Fire OS, an Android variant. This Android fork powers Amazon's tablets.¹⁶ Yet
 18 because Google's anticompetitive contracts prohibit players large and small from deploying Fire OS,
 19 it has not reached its competitive potential; it remains essentially an Amazon-only OS, despite other

20 Google Play on some, if not all or most, of its U.S. devices. According to the European
 21 Commission, the Google Play Store is pre-installed by device manufacturers on practically all
 22 Android mobile devices sold outside of China.

23 ¹³ "Sideloading is the installation of an application on a mobile device without using the device's
 24 official application-distribution method."

25 (<https://searchmobilecomputing.techtarget.com/definition/sideload> (last accessed Aug. 15, 2020).)

26 ¹⁴ See, *e.g.*, "Download apps to your Android device," available at:
https://support.google.com/android/answer/7391672?hl=en&ref_topic=7311596 (last accessed Aug.
 27 15, 2020) (setting forth official safety warnings for those who would venture outside Google Play).

28 ¹⁵ *E.g.*, <https://developer.amazon.com/docs/fire-tv/fire-os-overview.html> (last accessed Aug. 15,
 29 2020).

30 ¹⁶ It is also the operating system for Amazon's Fire Phone, a now-discontinued device of which
 31 Amazon sold very few. See https://www.phonearena.com/phones/Amazon-Fire-Phone_id8731 (last
 32 accessed Aug. 15, 2020).

1 manufacturers' reported interest in adopting it.¹⁷ Because Google regularly prohibits almost all
 2 Android device manufacturers from pre-installing Fire OS on their phones and tablets, it's further
 3 limited the Amazon Appstore's competitiveness (which otherwise would be pre-installed on those
 4 additional Fire OS devices).

5 10. Google's abuse of its power regarding Google Play is part of the behavior that led
 6 Europe to fine Google a record €4.34 billion, then about \$5.1 billion.¹⁸ In fact—in Europe—due to
 7 the E.U.'s action, Google has recently de-coupled Google Play and other popular apps from its
 8 Search and Chrome apps, the latter of which were part and parcel of its monopolistic dominance in
 9 mobile search. And Google also will cease its practice of refusing to license its apps to
 10 manufacturers who want to build devices with an Android-forked OS—but in Europe, not in the U.S.

11 11. *Fourth*, Google makes overblown, self-serving, and unjustifiable claims regarding
 12 security in order to dissuade consumers from downloading and trying competitors' app stores. Not
 13 content to rely solely on its huge install base for Google Play, which itself was obtained by
 14 anticompetitive means, Google also uses official Android warnings, warnings on devices, and
 15 security mechanisms on Android OS devices to convince consumers that it is too risky to try its
 16 competitors' stores. And if all of these security warnings are not enough, then Google will use its
 17 security systems to interfere with the ability of users to make purchases from other stores.

18 12. For example, its abuse of power on ostensible security grounds has recently led to an
 19 injunction issued by a Portuguese court, applicable throughout Europe, barring Google from using
 20 purported security measures to dissuade consumers from using an alternative Android OS app store,
 21 and from going so far as to disable it on devices on which users had found a way to install it.¹⁹
 22 Google, it appears, will take most any step to protect and bolster its multi-billion dollar Android app-
 23 store business.

24
 25 ¹⁷ See https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4581 ((last accessed Aug. 17,
 26 2020)).

27 ¹⁸ See, e.g., <https://www.nytimes.com/2018/07/18/technology/google-eu-android-fine.html> (last
 28 accessed Aug. 15, 2020).

¹⁹ See <https://www.androidpolice.com/2018/10/23/uptoide-gains-injunction-google-latest-antitrust-case-compensation-follow/> (last accessed Aug. 15, 2020).

1 **Abuse of monopoly (or monopsony) power through Google Play**

2 **Generally**

3 13. Having gained monopoly power by anticompetitive means in the U.S. market for
 4 Android OS app stores, Google abuses that power by continuing to stifle innovation and consumer
 5 choice. Its overbearing contracts and practices steal oxygen even from well-resourced competitors
 6 such as Amazon, robbing the marketplace of innovative means of distributing apps at lower costs to
 7 developers. And by stifling competition, Google deprives consumers of readily accessible and
 8 vibrant choices in the U.S. market for Android OS app stores. Moreover, as described herein,
 9 Google correspondingly has willfully and unlawfully acquired, maintained, and abused monopoly
 10 market power, and otherwise acted improperly and unlawfully, in the U.S. Android developer
 11 distribution and payment processing markets as alleged herein.

12 **30% default transaction fee**

13 14. Google has abused its unlawfully gained dominance to impose supracompetitive
 14 pricing: a default 30% service fee²⁰ paid by developers on each sale of non-zero-priced Android OS
 15 app purchases²¹ made at its Google Play store, and, as the case may be, on sales of in-app digital add-
 16 ons, including subscriptions, distributed via apps sold in Google Play.²² So if an app or in-app add-

18 ²⁰ Google's current and past 70% (developer) / 30% (Google) revenue split is memorialized at
 19 paragraph 3.4 of its Google Play Developer Distribution Agreement by reference to a Service Fee,
 20 which in turn is linked to Google's "Service fees" schedule. (See
 21 <https://play.google.com/about/developer-distribution-agreement.html> (Dev. Agr.) (last accessed Aug.
 22 15, 2020), available at: <https://support.google.com/googleplay/android-developer/answer/112622?hl=en> ("For apps and in-app products offered through Google Play, the
 23 service fee is equivalent to 30% of the price. You receive 70% of the payment. The remaining 30%
 24 goes to the distribution partner and operating fees.")) (last accessed Aug. 15, 2020).)

25 ²¹ Google has modified its service-fee structure with respect to subscriptions.
 26 (<https://support.google.com/googleplay/android-developer/answer/112622?hl=en> ("As of January 1,
 27 2018, the transaction fee for subscription products decreases to 15% for any subscribers you retain
 28 after 12 paid months. If a subscriber has been active as of this date, that time will be counted. For
 29 example, if a subscriber has been active for 4 months, the transaction fee will be reduced to 15%
 30 after 8 more paid months.").)

31 ²² Google also charges developers a \$25 fee to set up a Google Play developer account.
 32 (<https://support.google.com/googleplay/android-developer/answer/6112435?hl=en>) ("There is a \$25
 33 USD one-time registration fee") (last accessed Aug. 15, 2020).) This fee helps offset costs that
 34 Google may claim as justification for its incredibly high 30% service fee, especially considering the
 35 sheer number of developers from whom Google collects it.

1 on in Google Play costs \$1.99, Google takes nearly \$.60.²³ As for in-app sales, this charge is
 2 essentially for payment-processing services, which could be purchased from other providers at much
 3 cheaper rates,²⁴ and with faster payments to developers, if only Google permitted developers to use
 4 them. Tellingly, Google has succeeded in maintaining this astounding and exploitative 30% take rate
 5 (with the exception noted) since it opened its app store in 2008, despite, *e.g.*, accrued economies of
 6 scale.

7 15. By imposing this unjustified default 30% tax rate on paid Google Play transactions,
 8 including as to in-app digital product distributions, and by inserting the requisite terms into its
 9 contracts with developers, Google extracts more money from developers than they would otherwise
 10 have to pay for the distribution of Android OS apps and add-ons sold via in-app purchase, including
 11 subscriptions. But for Google's exclusionary behavior, including as to in-app payment processing as
 12 alleged herein, the Android app distribution market (as well as the tied payment processing market)
 13 would have more, and more meaningful and effective, competition.

14 16. Even more evidence of Google's supracompetitive pricing has emerged via the
 15 developer of Fortnite, a currently popular game. This developer, Epic Games, decided to forego
 16 sales of Fortnite in the Google Play store and to distribute the game on its own—in spite of the need
 17 for the difficult sideload process engendered by Google's anticompetitive behavior. Epic has
 18 divulged information, discussed below,²⁵ further demonstrating that Google's 30% levy on Google
 19 Play transactions far exceeds the bounds of even a generous profit. Epic eventually opted to return to
 20 Google Play, due to the effects and obstacles brought about by Google's anticompetitive conduct and
 21 policies, including as to the deliberately complicated and fraught way in which Fortnite must be

22 ²³ Or, alternatively, a sum calculated on the basis of a still-supracompetitive 15% commission on
 23 certain subscriptions, *see n.22, supra*, for what amounts to payment processing services that could be
 purchased much cheaper from other provider, if Google permitted developers to use them.

24 ²⁴ The cost of alternative electronic payment processing tools, which Google does not permit to
 25 be used for the purchase of in-app digital content or within Android games, can be one tenth of the
 30% cost of Google Play Billing. For example, the base U.S. rate for electronic payment processing
 tool PayPay is 2.9%, for Stripe it is also 2.9%, for Square it is 2.6%-3.5%, and for Braintree it is
 2.9%. That is particularly so for PayPal's microtransaction rates (for developers whose sales average
 under \$10), the latter of which do not include a separate fee on top of the percentage-of-sale-price
 charge.

28 ²⁵ *See Section IV.H.4, infra.*

1 loaded onto affected devices. What is more, as explained below, *see ¶¶ 118-19, infra*, Google
 2 removed Epic from Google Play a few days ago, after Epic dared to offer a cheaper way for
 3 consumers to purchase virtual currency for use in Fortnite, via Epic's own payment processing
 4 system. Use of that system meant that Epic could avoid payment Google's supracompetitive fee for
 5 the forced use of its own payment processing system.

6 17. Other compelling evidence of supracompetitive pricing comes from Google's own
 7 Chrome Web Store, in which it charges developers not 30%, but 5% transaction fees.²⁶

8 18. Furthermore, Google's behavior depresses output. But for Google's abusive
 9 behavior, developers would have more pricing flexibility in the hugely dominant Google Play
 10 store—and pricing flexibility is, of course, useful.²⁷ There would be more distribution transactions
 11 but for Google's anticompetitive behavior. Therefore, Google's abusive behavior depresses output
 12 of transactions in the U.S. market for Android OS app stores. App developers would create and sell
 13 more product but for Google's supracompetitive default 30% tax.

\$.99 minimum-price agreement

15 19. Google also abuses its unlawfully obtained monopoly power by way of minimum
 16 price fixing. Through its adhesive contracts with developers, it requires that regularly priced paid
 17 apps, in-app purchases, and subscriptions for U.S. consumers be priced no lower than \$.99. So, for
 18 example, there can be no regularly priced \$.69 apps or in-app products sold in Google Play.

19 20. There is no pro-competitive justification for this minimum-price requirement.
 20 Minimum price fixing in Google Play has no salutary effects on inter-brand competition, a typical
 21 purported justification for such requirements. Rather, this mandatory pricing term was designed for
 22 the purpose of enabling Google to earn at least 30 cents on every dollar spent in the Google Play
 23 store.

24 21. Google's minimum-price mandate also depresses output. In light of consumers'
 25 demonstrably strong preference for low-priced apps and related products, developers would sell
 26 more apps and app-related products but for this requirement.

27 ²⁶ See Section IV.H.4, *infra*.

28 ²⁷ See, e.g., discussion in Sections IV.G and IV.H.

1 22. In sum, Google’s willful acquisition and maintenance of monopoly power in the
2 markets identified, and its abuse of that power, *inter alia*, to impose its supracompetitive distribution
3 and in-app payment processing fees on U.S. Android OS developers such as the plaintiff, are harmful
4 to competition and harmful to developers specifically. Alternatively, if Google is determined to be
5 the purchaser of digital products from Android OS developers that in turn sells these products to end-
6 users, via Google Play or otherwise, then Google (also) acts as a monopsonist, or attempted
7 monopsonist. (A monopsonist is a buy-side monopolist.) The circumstances, effects, and allegations
8 are essentially the same for monopoly or attempted monopoly: By Google’s behavior as alleged
9 herein, Google uses its monopsony power to underpay Android OS developers below the price they
10 would obtain in a competitive market for their apps and in-app products. Therefore, plaintiff’s
11 allegations herein should be understood to also plead in the alternative claims based on monopsony,
12 both for plaintiff and the putative classes. In either alternative—and as otherwise pled herein—
13 Google’s behavior violates antitrust and consumer protection law. Plaintiff seeks monetary relief to
14 redress the injuries caused by Google’s past and ongoing conduct, and it seeks injunctive relief to
15 stop Google’s ongoing improper, unlawful, and harmful behavior in the relevant markets.

II. JURISDICTION

17 23. This Court has subject matter jurisdiction over this action under 28 U.S.C. § 1331
18 because Plaintiff alleges violations of federal law, namely, the federal Sherman Act. The Court has
19 supplemental jurisdiction over the plaintiff's state law claim pursuant to 28 U.S.C. § 1337(a).

20 24. This Court has personal jurisdiction over the Defendants. Google LLC and Google
21 Payment are headquartered in this District. All Defendants have engaged in sufficient minimum
22 contacts with the United States and have purposefully availed themselves of the benefits and
23 protections of United States and California law, such that the exercise of jurisdiction over them
24 would comport with due process requirements. Further, the Defendants have consented to the
25 exercise of personal jurisdiction by this Court.

26 25. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b) because Google LLC
27 and Google Payment maintain their principal places of business in the State of California and in this
28 District, because a substantial part of the events or omissions giving rise to Epic's claims occurred in

this District, and because, pursuant to 28 U.S.C. § 1391(c)(3), any Defendants not resident in the United States may be sued in any judicial district and their joinder with others shall be disregarded in determining proper venue. In the alternative, personal jurisdiction and venue also may be deemed proper under Section 12 of the Clayton Antitrust Act, 15 U.S.C. § 22, because Defendants may be found in or transact business in this District. Furthermore, the Google Play Terms of Service incorporates the Google Terms of Service by reference, and the latter designates this judicial district as the federal venue for this action.²⁸

26. Intradistrict Assignment: Assignment to the San Jose division of this Court is appropriate because Defendants Google LLC and Google Payment have their headquarters and/or principal place of business in Mountain View, Santa Clara County, California, which is located in this division of the Northern District of California. Also, it is believed and therefore alleged that many members of the proposed class reside or do business in the San Jose division of the Northern District of California.

III. PARTIES

A. The plaintiff

27. Plaintiff Pure Sweat Basketball is an Illinois corporation with its principal place of business in Crystal Lake, Illinois. It is the developer of the Pure Sweat Basketball Workout App. Pure Sweat Basketball is a party to the developer contracts referenced in this complaint. These agreements specify the commission rate and pricing and other mandates described herein. Also, in order to be permitted to make its app available in Google Play, and to sell non-zero priced subscriptions through its app, Pure Sweat Basketball has paid Google's \$25 developer fee. To the best of its knowledge, Pure Sweat Basketball's last distributions of its app through Google Play, and sales of subscriptions at non-zero prices through the app, have occurred this year. Pure Sweat

²⁸ See Google Play Terms of Service, available at: <https://play.google.com/about/play-terms/index.html>, which incorporates the Google Terms of Service, the latter of which is available at: <https://policies.google.com/terms> (“California law will govern all disputes arising out of or relating to these terms, service-specific additional terms, or any related services, regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.”) (last accessed Aug. 15, 2020).

1 Basketball charges \$4.99 monthly for its digital subscription product, or \$49.99 annually, and it has
2 paid Google's supracompetitive 30% commission on each sale.

3 28. Alternatively, Google paid Pure Sweat Basketball what amounts to an artificially low
4 wholesale price for digital products sold via Google Play.

5 29. Furthermore, Pure Sweat Basketball's in-app subscription sales (like the app, if sold at
6 above-zero prices) have always been subject to Google's requirement that app transactions be priced
7 at a minimum of \$.99, as well as other pricing mandates. Google has denied Pure Sweat Basketball
8 the ability to choose to sell digital products at price points below \$.99, in efforts to achieve
9 maximum sales and effect business plans as it would elect, to plaintiff's detriment.

10 **B. The defendants**

11 30. Defendant Google LLC is a Delaware limited liability company with its headquarters
12 and principal place of business in Mountain View, California. It is the owner of Google Play, from
13 and by which developers of Android apps sell paid applications, music, movies, books and in-app
14 products to Android device owners. Its parent, Alphabet Inc., was number 15 on last year's U.S.
15 Fortune 500,²⁹ with 2019 revenues of nearly \$137 billion and net income of \$30.736 billion.³⁰

16 31. Defendant Google Ireland Limited is a limited company organized under the laws of
17 Ireland with its principal place of business in Dublin, Ireland, and a subsidiary of Google LLC.
18 Google Ireland contracts with all app developers that distribute their apps through Google Play and is
19 therefore a party to the anticompetitive contractual restrictions at issue in this complaint.

20 32. Defendant Google Commerce Limited is a limited company organized under the laws
21 of Ireland with its principal place of business in Dublin, Ireland, and a subsidiary of Google LLC.
22 Google Commerce contracts with all app developers that distribute their apps through Google Play
23 and is therefore a party to the anticompetitive contractual restrictions at issue in this complaint.

24 33. Defendant Google Asia Pacific Pte. Ltd. is a private limited company organized under
25 the laws of Singapore with its principal place of business in Mapletree Business City, Singapore, and
26 a subsidiary of Google LLC. Google Asia Pacific contracts with all app developers that distribute

27 ²⁹ <https://fortune.com/fortune500/2019/alphabet/> (last accessed Aug. 15, 2020).

28 ³⁰ *Id.*

1 their apps through Google Play and is therefore a party to the anticompetitive contractual restrictions
2 at issue in this complaint.

3 34. Defendant Google Payment Corp. is a Delaware corporation with its principal place
4 of business in Mountain View, California, and a subsidiary of Google LLC. Google Payment
5 provides in-app payment processing services to Android app developers and Android users and
6 collects a 30% commission on many types of processed payments, including payments for apps sold
7 through Google Play and in-app purchases made within such apps.

8 IV. RELEVANT FACTS

9 35. Google has injured plaintiff, the putative class of U.S. developers it seeks to
10 represents, and competition in the relevant markets define herein, *see* Part VI, by way of its unlawful
11 behavior in the U.S. sale of paid Android OS apps from its Google Play store and in-app sales of in-
12 app add-ons, including but not limited to subscriptions. As the holder of an unlawfully obtained
13 monopoly in the U.S. market for Android OS app stores, Google's behavior has resulted in developer
14 overcharges in these transactions due to its imposition of a supracompetitive 30% fee on each paid
15 sale from its store. Also, Google's aggressive and improper monopolization (or attempted
16 monopolization) of the U.S. Android OS app³¹ store market has stifled competition by strongly
17 inhibiting the emergence of vibrant, and viable, competitors, which reinforces and strengthens its
18 pernicious and overbearing market power.

19 36. Additionally, Google requires app developers to sell at minimum prices. There is no
20 pro-competitive justification for this practice, and certainly none in an environment where Google
21 Play already is overwhelmingly dominant in the U.S. space for Android OS app stores.

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28 ³¹ Throughout this complaint, references to Android OS apps also refer to in-app purchases and
paid subscriptions.

1 **A. The Google Play store is the official Android OS app store.**

2 **History**

3 37. Google introduced its app store, then known as Android Market, in or about August
4 2008.³² On or about October 22, 2008, Google, HTC, and T-Mobile released the first Android OS
5 smartphone, the T-Mobile G-1.³³ This very first released-to-consumer Android OS smartphone came
6 pre-loaded with the Android Market client. As T-Mobile's September 2008 press release explained:

7 **Android Market:**

8 The T-Mobile G1 is the first phone to offer access to Android Market, which
9 hosts unique applications and mash ups of existing and new services from developers
10 around the world. With just a couple of short clicks, customers can find and download
11 a wide range of innovative software applications — from games to social networking
12 and on-the-go shopping — to personalize their phone and enhance their mobile
13 lifestyle. When the phone launches next month, dozens of unique, first-of-a-kind
14 Android applications will be available for download on Android Market . . .³⁴

15 38. Next, on or about March 6, 2012,³⁵ Google introduced its Google Play store. Google
16 Play both succeeded and subsumed its predecessor, Android Market, adding digitized music and
17 books to the store's offerings.³⁶ It now carries movies and television programs as well.³⁷

18 **How Google Play works**

19 39. For their products to be sold in the Google Play store, application developers³⁸ enter
20 into the Google Play Developer Distribution Agreement.³⁹ The developer then uploads its product to

21 ³² Google launched Android Market, Google Play's predecessor for Android OS Apps, on or
22 about August 28, 2008. (See, e.g., <https://www.cnet.com/news/google-announces-android-market-for-phone-apps/> (dated Aug. 28, 2008) (last accessed Aug. 15, 2020).)

23 ³³ "T-Mobile Unveils the T-Mobile G1—the First Phone Powered by Android," dated September
24 22 (and 23), 2008, available at: <https://www.t-mobile.com/news/t-mobile-unveils-the-t-mobile-g1-the-first-phone-powered-by> (last accessed Aug. 15, 2020).

25 ³⁴ *Id.*

26 ³⁵ <https://googleblog.blogspot.com/2012/03/introducing-google-play-all-your.html> (last accessed Aug. 15, 2020).

27 ³⁶ *Id.* ("Starting today, Android Market, Google Music and the Google eBookstore will become
28 part of Google Play. On your Android phone or tablet, we'll be upgrading the Android Market app to
the Google Play Store app over the coming days.").

29 ³⁷ https://play.google.com/store/apps/details?id=com.google.android.videos&hl=en_US (last
accessed Aug. 15, 2020).

30 ³⁸ Except presumably Google, which also offers its own products—including paid products—in
31 the Google Play store. (See <https://play.google.com/store/apps/details?id=com.google.android.apps.youtube.music&hl=en>)

1 Google servers for review, testing (if any), limited release (if any), and production-release for sale to
 2 consumers in the store.⁴⁰ As part of the process, the developer “grant[s] to Google a nonexclusive
 3 and royalty-free license to distribute [the developer’s] Products in the manner indicated in the Play
 4 Console.”⁴¹

5 40. Developers ostensibly set prices for products sold in the Google Play store. But, as
 6 described above, Google’s developer contract (more specifically, its incorporated terms or policies)
 7 requires that paid products be sold to U.S. consumers at a regular price of no lower than \$.99 (and a
 8 \$400 maximum).⁴² Therefore, developers cannot sell regularly priced apps at \$.69, for example.
 9 The contract has, however, allowed for lower minimum prices for 18 other countries’ purchasers
 10 since November 2015 (or earlier in 2015 for India).⁴³ For example, an app that must be priced for
 11 U.S. consumers no lower than \$.99 can be priced at approximately \$.13 for Indian purchasers, as of
 12 the exchange rate on Aug. 15, 2020.⁴⁴ There is no evidence that Google is somehow losing money
 13 by way of this contractual practice. But even if one posits hypothetically that it is, then U.S.

14 (offering YouTube Music app in Google Play, and referring to the paid Music Premium version that
 15 is also available) (last accessed Aug. 15, 2020).

16 ³⁹ Dev. Agr. (current agreement, effective as of Feb. 26, 2018) (Dev. Agr.) (last accessed Aug.
 17 15, 2020). For the pre-Feb. 26, 2018 version, *see* <https://play.google.com/about/developer-distribution-agreement/archive.html> (last accessed Aug. 15, 2020).

18 ⁴⁰ *Id.*, ¶ 4.2 (“You are responsible for uploading Your Products to Google Play, providing
 19 required Product information and support to users, and accurately disclosing the permissions
 20 necessary for the Product to function on user Devices.”) (last accessed Aug. 15, 2020);
<https://support.google.com/googleplay/android-developer/answer/113469?hl=en> (“Upload an app”)
 (last accessed Aug. 15, 2020); <https://support.google.com/googleplay/android-developer/answer/7159011?hl=en> (“Prepare & roll out releases”) (last accessed Aug. 15, 2020).

21 ⁴¹ Dev. Agr., ¶ 5.1.

22 ⁴² Dev. Agr., ¶ 5.2 (referring to sales to be made “in the manner indicated in the Play Console”).
 23 The Play Console, and Play Console help sections, set forth the minimum pricing requirements: *see*
<https://support.google.com/googleplay/android-developer/answer/6334373?hl=en> (“Set up prices &
 24 app distribution”) (last accessed Aug. 15, 2020); <https://support.google.com/googleplay/android-developer/table/3541286?hl=en> (“Supported locations for distribution to Google Play users”) (last
 accessed Aug. 15, 2020).

25 ⁴³ *See, e.g.*, “Google slashes minimum app prices to way below \$0.99 in 17 countries,”
 26 *Mashable*, Nov. 18, 2015, available at: <https://mashable.com/2015/11/18/google-minimum-app-prices/#JluQdT6ebEqd> (last accessed Aug. 15, 2020).

27 ⁴⁴ <https://support.google.com/googleplay/android-developer/table/3541286> (apps for Indian
 28 consumers may be priced from between 10.00 INR to 26,000.00 INR, or approximately \$.13 to
 \$347.11, as of Aug. 15, 2020—*see* <https://transferwise.com/us/currency-converter/inr-to-usd-rate?amount=10> (last accessed Aug. 15, 2020)).

1 developers (and consumers) are subsidizing consumers from other countries by way of the higher
 2 U.S. minimum prices and the sums that Google collects thereby, such that U.S. developers (and
 3 consumers) are paying more than they ought to be paying as a result of this restraint of trade.

4 41. Developers sell their apps, in-app products,⁴⁵ and subscriptions⁴⁶ directly through the
 5 Google Play store. Consumers select apps from the displays that Google organizes and sets up;
 6 tender their payments to Google; and download the apps from Google to their devices.⁴⁷

7 42. Developers, in turn, pay Google 30% of each paid sale of an app or in-app product.

8 43. In other words, developers are direct purchasers of Google's distribution services, and
 9 they are damaged directly by the overcharge on each sale between Google's supracompetitive fee
 10 vehicles. A fee subject to competition but for Google's restraints and abusive behavior.

11 **B. While the Android OS is superficially open-source, Google maintains an iron grip on its
 12 commercial aspects.**

13 44. Google owns and controls the Android OS. Ostensibly, the code for the operating
 14 system itself is open-source. According to Google, anyone can download, use, and modify the
 15 Android OS source code, as long as Google allows it. Google calls this aspect of its OS the Android
 16 Open Source Project (AOSP). As Google⁴⁸ puts it:

17 Android is an open source operating system for mobile devices and a
 18 corresponding open source project led by Google. This site and the Android Open
 19 Source Project (AOSP) repository offer the information and source code needed to

20 ⁴⁵ See, e.g., https://support.google.com/googleplay/answer/1061913?hl=en&ref_topic=7049688#
 21 (“Make in-app purchases in Android apps”) (“With some apps, you can buy additional content or
 22 services within the app. We call these ‘in-app purchases.’ Here are some examples of in-app
 23 purchases: A sword that gives you more power in a game”)(last accessed Aug. 15, 2020).

24 ⁴⁶ https://support.google.com/googleplay/answer/2476088?hl=en&ref_topic=1689236
 25 (“Subscribe to services or content”) (referring to subscriptions to magazines, newspapers, and other
 26 material, and explaining how to subscribe) (last accessed Aug. 15, 2020).

27 ⁴⁷ See, e.g.,
 28 https://support.google.com/googleplay/answer/4355207?hl=en&ref_topic=3364260&co=GENIE.Plat
 29 form%3DAndroid&oco=1 (“Get started with Google Play”-Android) (last accessed Feb. 1, 2019);
https://support.google.com/googleplay/answer/113409?hl=en&ref_topic=3365058 (“Get Android
 30 apps and digital content from the Google Play Store”) (“1. Open the Google Play Store app. 2.
 31 Search or browse for content. 3. Select an item. 4. Tap Install (for free items) or the item’s price. 5.
 32 Follow the onscreen instructions to complete the transaction and get the content.”) (last accessed
 33 Aug. 15, 2020).

34 ⁴⁸ “Android was originated by a group of companies known as the Open Handset Alliance, led by
 35 Google. . . . The Android Open Source Project is led by Google, who maintains and further develops
 36 Android.” (<https://source.android.com/setup/>) (last accessed Aug. 15, 2020).)

create custom variants of the Android OS, port devices and accessories to the Android platform, and ensure devices meet the compatibility requirements that keep the Android ecosystem a healthy and stable environment for millions of users. . . .⁴⁹

45. But the open-source code only enables a device's most basic functions. As Google explains: "The Android Open-Source Project (AOSP) is the core software stack behind the Android OS and consists of the operating system, middleware, and open-source apps like a phone dialer, email, and messaging. Mobile operators, device makers, and developers can use this to build devices and apps."⁵⁰

46. What makes a mobile device marketable and attractive to modern consumers are its apps. Google has developed several popular apps, including YouTube, Google Maps, Gmail as well as the Google Play client, among others. These are proprietary apps, and they are decidedly not open-source. Manufacturers must sign agreements to pre-install them on their Android OS devices, and in the U.S., they come bundled together as a suite—manufacturers who want to pre-install any one of them must pre-install all of them.⁵¹ Google refers to this program as Google Mobile Services. As Google touts it:

The best of Google, right on your devices

Google Mobile Services brings Google's most popular apps and APIs to your Android devices.

Google's most popular apps, all in one place

Google Mobile Services (GMS) is a collection of Google applications and APIs that help support functionality across devices. These apps work together seamlessly to ensure your device provides a great user experience right out of the box.⁵²

47. GMS is an element of how Google dominates the entire Android ecosystem. Over time, it has moved more and more apps into its proprietary, non-open-source universe of apps, as

⁴⁹ <https://source.android.com/> (last accessed Aug. 15, 2020).

⁵⁰ “Understanding Android,” available at: <https://www.android.com/everyone/facts/> (last accessed Aug. 15, 2020).

⁵¹ “After building an Android compatible device, consider licensing Google Mobile Services (GMS), Google’s proprietary suite of apps (Google Play, YouTube, Google Maps, Gmail, and more) that run on top of Android. GMS is not part of the Android Open Source Project and is available only through a license with Google.” (<https://source.android.com/compatibility/overview> (last accessed Aug. 15, 2020).)

⁵² <https://www.android.com/gms/> (last accessed Aug. 15, 2020).

1 well as services that make third-party apps work effectively, in ways that users have come to expect
 2 (e.g., by calling up map services, now through the proprietary Google Maps). As one analyst
 3 describes Google's machinations:

4 Over time, Google began migrating applications – like Search, Music, and the
 5 Calendar – out of AOSP and into GMS. Any OEM wanting to use AOSP to build its
 6 own Android fork would now have to build their own versions of these apps, on top
 7 of email, maps, and so on. (*Ars Technica* has a good rundown of the application
 migration here⁵³.) On top of that, the device would lack the Google services APIs that
 lots of third-party apps need. And Google didn't stop there. Google Mobile Services
 mutated into Google Play Services⁵⁴ in September 2012.

8 A fork in the road: Why Google Play Services is key to understanding the 'forking'
 9 question

10 Back in May 2013 at the Google I/O Keynote there was no mention of an Android
 11 upgrade. Instead, Google announced a bunch of new features to be rolled out to
 12 Android devices via Google Play Services. Google had started to move away from
 13 Android-as-platform to Play Services-as-platform. As Ron Amadeo writes: 'Play
 14 Services has system-level powers, but it's updatable. It's part of the Google apps
 package, so it's not open source. OEMs are not allowed to modify it, making it
 completely under Google's control... If you ever question the power of Google Play
 Services, try disabling it. Nearly every Google App on your device will break.' It is 'a
 single place that brings in all of Google's APIs on Android 2.2 and above.' Things
 like Play Game services, Google Cloud Messaging and fused location services are all
 handled by Play Services, and not the OS.

15 48. One important condition for access to GMS is that manufacturers agree to comply
 16 with so-called compatibility requirements. As Google puts it:

17 ⁵³ <https://arstechnica.com/gadgets/2018/07/googles-iron-grip-on-android-controlling-open-source-by-any-means-necessary/> (last visited Dec. 10, 2018).

18 ⁵⁴ Google Play services is different from the Google Play store. In fact, one method of
 19 distribution is via Google Play. (See, e.g.,
https://play.google.com/store/apps/details?id=com.google.android.gms&hl=en_US ("Google Play
 20 services is used to update Google apps and apps from Google Play. This component provides core
 21 functionality like authentication to your Google services, synchronized contacts, access to all the
 22 latest user privacy settings, and higher quality, lower-powered location based services.") (last
 accessed Aug. 15, 2020).) In its Overview of Google Play Services, Google writes:

23 With Google Play services, your app can take advantage of the latest, Google-
 24 powered features such as Maps, Google+, and more, with automatic platform updates
 distributed as an APK through the Google Play store. This makes it faster for your
 25 users to receive updates and easier for you to integrate the newest that Google has to
 offer.
 26 * * *

27 The client library contains the interfaces to the individual Google services and
 allows you to obtain authorization from users to gain access to these services with
 their credentials.

28 <https://developers.google.com/android/guides/overview> (last accessed Aug. 15, 2020).

1 We ask GMS partners to pass a simple compatibility test and adhere to our
 2 compatibility requirements for their Android devices. In turn, your users enjoy greater
 3 app reliability and continuity.⁵⁵

4 49. Ostensibly, Google seeks compatibility in order to help assure that software works
 5 across a variety of devices. But Google has gone further than merely requiring compatibility testing
 6 for devices on which manufacturers wish to install the GMS suite. As part of its strategy to maintain
 7 as much dominance over the Android ecosystem as possible, Google refuses to license GMS to
 8 manufacturers who develop so-called Android forks—variants of the official Android OS published
 9 by Google. As the European Commission put it with respect to the record antitrust fine it imposed
 on Google last summer (discussed *infra*⁵⁶):

10 Google has prevented device manufacturers from using any alternative version
 11 of Android that was not approved by Google (Android forks). In order to be able to
 12 pre-install on their devices Google's proprietary apps, including the Play Store and
 13 Google Search, manufacturers had to commit not to develop or sell even a single
 device running on an Android fork. The Commission found that this conduct was
 abusive as of 2011, which is the date Google became dominant in the market for app
 stores for the Android mobile operating system.⁵⁷

14 According to the European Commission, this has thwarted even as powerful a potential competitor as
 15 Amazon. Manufacturers who want access to GMS are prohibited by way of their anti-fragmentation
 16 contractual terms with Google from building even a single device based on Amazon's Android OS
 17 fork, known as Fire OS. As discussed below, this means that Amazon is denied another way to
 18 distribute its own Android OS app store.⁵⁸

20 ⁵⁵ *Id.*

21 ⁵⁶ See Section IV.F.1, *infra*.

22 ⁵⁷ See “Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android
 23 mobile devices to strengthen dominance of Google's search engine,” July 18, 2018, available at:
http://europa.eu/rapid/press-release_IP-18-4581_en.htm (last accessed Aug. 15, 2020).

24 ⁵⁸ Per the European Commission:

25 This practice reduced the opportunity for devices running on Android forks to be
 26 developed and sold. For example, the Commission has found evidence that Google's
 27 conduct prevented a number of large manufacturers from developing and selling
 devices based on Amazon's Android fork called “Fire OS”.

28 *In doing so, Google has also closed off an important channel for competitors to
 introduce apps and services, in particular general search services, which could be pre-
 installed on Android forks.*

29 [\(emphasis added\).](http://europa.eu/rapid/press-release_IP-18-4581_en.htm)

1 50. There is no justifiable basis for Google's restraints with regard to Android forks. As
 2 the European antitrust authorities found, Google's stated aim—to help ensure that software works
 3 across various Android OS devices—does not require or justify the restraints on competition that
 4 Google forces upon device manufacturers:

5 The Commission also assessed in detail Google's arguments that these
 6 restrictions were necessary to prevent a "fragmentation" of the Android ecosystem,
 7 and concluded that these were not well founded. First, Google could have ensured that
 8 Android devices using Google proprietary apps and services were compliant with
 Google's technical requirements, without preventing the emergence of Android forks.
 Second, Google did not provide any credible evidence that Android forks would be
 affected by technical failures or fail to support apps.⁵⁹

9 **C. Google is a monopolist in the U.S. market for Android OS app stores, and, accordingly,
 10 in the markets for app (and in-app) distribution services and in-app payment
 processing.**

11 51. Google's anticompetitive strategies around Android have worked. Via Google Play,
 12 Google is, and long has been, a monopolist in the U.S. market for app stores selling Android OS apps
 13 and in-app purchases (and subscriptions as well), as explained herein. And, accordingly, it is a
 14 monopolist in the markets for Android app (and in-app) distribution and in-app payment processing
 15 services for U.S. Android app developers as well.

16 52. While Google keeps a tight hold on information regarding its Android OS app store
 17 market power in the U.S., its high percentage of market share can be inferred from the tens of
 18 millions of Android devices deemed "Android compatible,"⁶⁰ such that Google Play can be (and
 19 usually is) pre-installed⁶¹—inferentially, far more than any other app store.⁶²

20 53. Google was first to market in 2008 with its app store, Android Market (which
 21 morphed into Google Play). The Amazon Appstore, for example, would not open until March 22,

23 ⁵⁹ *Id.*

24 ⁶⁰ See, e.g., <https://source.android.com/setup/start/faqs> (frequently asked questions, providing
 25 details re: Android compatibility certification) (Devices that are 'Android compatible' may
 participate in the Android ecosystem, including Google Play") (last accessed Aug. 15, 2020).

26 ⁶¹ See, e.g., <https://support.google.com/googleplay/answer/1727131?hl=en> (Google Play Help
 27 screen, providing 852-page list of supported devices, including devices manufactured by Samsung,
 HTC, LG, and Motorola, among many others) (last accessed Aug. 15, 2020).

28 ⁶² According to the European Commission, the Google Play Store is pre-installed by device
 manufacturers on practically all Android mobile devices sold outside of China.

1 2011.⁶³ But Google was not content to build on its earlier start fairly; instead, it unlawfully and
2 abusively acted to procure and attain monopoly status as alleged herein.

3 54. According to the European Commission:

4 Google is dominant in the *worldwide* market (excluding China) for app stores
5 for the Android mobile operating system. *Google's app store, the Play Store,*
6 *accounts for more than 90% of apps downloaded on Android devices.* This market is
also characterized by high barriers to entry . . .⁶⁴

7 These facts powerfully support the conclusion that Google is a monopolist in its home (U.S.) market
8 for Android OS app stores—and a monopolist in the markets for Android app (and in-app)
9 distribution and in-app payment processing services for U.S. Android app developers, as explained
herein.

10 55. Further, the technical barriers that strongly inhibit the sideloading of other app stores,
11 along with Google's "security" measures and cautions, also support the proposition that Google has
12 attained and wields monopoly power in the markets for Android app (and in-app) distribution and in-
13 app payment processing services for U.S. Android app developers.

14 **D. Google is an attempted monopolist in the U.S. market for Android OS app stores, and,
15 accordingly, in the markets for app (and in-app) distribution services and payment
16 processing services for U.S. Android app developers.**

17 56. Alternatively, for the foregoing reasons, Google is an attempted monopolist in the
18 U.S. market for app stores selling Android OS apps and in-app purchases (and subscriptions as well).
19 While the facts alleged amply support a finding that Google already has attained monopoly status in
20 this U.S. market, at the least, they support a finding that Google is attempting to monopolize this
market by improper means.

21
22
23
24
25 ⁶³ "Amazon's Appstore for Android is well-executed and poised for success," *Forbes*, March 22,
26 2011, available at: fortune.com/2011/03/22/amazons-appstore-for-android-is-well-executed-and-poised-for-success/ (last accessed Aug. 15, 2020).

26 ⁶⁴ "Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android
27 mobile devices to strengthen dominance of Google's search engine," July 18, 2018, available at:
http://europa.eu/rapid/press-release_IP-18-4581_en.htm (last accessed Aug. 15, 2020) (emphasis
28 added).

1 **E. Apple offers no market constraints via its iOS app store, through which it distributes
2 incompatible apps.**

3 57. Nor does Apple, via its iOS mobile operating system, or its iOS apps or iOS App
4 Store, provide any constraints to Google's market power. The apps are incompatible. Therefore,
5 Android SO developers cannot sell their Android apps to Android device wieners via Apple's iOS
6 app store.

7 58. Furthermore, the switching costs between Android and iOS are high. Device owners
8 have great sunk costs in their individual spheres: the cost of their phones or tablets; the learning
9 curve inherent in each; and the money and time invested in apps and in-app purchases which, due to
10 technical incompatibilities, they cannot take to iOS devices, to name some. Also, many owners of
11 Android OS devices will not be able to afford Apple hardware, which is sold at premium prices, or
12 they will not find the potential switch economically sensible, so they decline to make it.

13 59. Europe is in accord. Per the European Commission:

14 As a licensable operating system, Android is different from operating systems
15 exclusively used by vertically integrated developers (like Apple iOS or Blackberry). Those are not part of the same market because they are not available for licence by
16 third party device manufacturers.

17 Nevertheless, the Commission investigated to what extent competition for end
18 users (downstream), in particular between Apple and Android devices, could
19 indirectly constrain Google's market power for the licensing of Android to device
20 manufacturers (upstream). The Commission found that this competition does not
21 sufficiently constrain Google upstream for a number of reasons, including:

22 end user purchasing decisions are influenced by a variety of factors (such as
23 hardware features or device brand), which are independent from the mobile operating
24 system;

25 Apple devices are typically priced higher than Android devices and may
26 therefore not be accessible to a large part of the Android device user base;

27 Android device users face switching costs when switching to Apple devices,
28 such as losing their apps, data and contacts, and having to learn how to use a new
operating system; and

29 even if end users were to switch from Android to Apple devices, this would
30 have limited impact on Google's core business. That's because Google Search is set as
31 the default search engine on Apple devices and Apple users are therefore likely to
32 continue using Google Search for their queries.⁶⁵

27 ⁶⁵ See "Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android
28 mobile devices to strengthen dominance of Google's search engine," available at:
http://europa.eu/rapid/press-release_IP-18-4581_en.htm. (last accessed Aug. 15, 2020).

1 60. Regarding app stores specifically, the European Commission has stated:

2 Google is dominant in the worldwide market (excluding China) for app stores
3 for the Android mobile operating system. Google's app store, the Play Store, accounts
4 for more than 90% of apps downloaded on Android devices. This market is also
5 characterised by high barriers to entry. *For similar reasons to those already listed
above, Google's app store dominance is not constrained by Apple's App Store, which
is only available on iOS devices.*⁶⁶

6 **F. Google engages in unlawful behavior in order to restrain trade and to maintain and
7 grow its monopoly in the markets at issue.**

8 61. Google maintains monopoly status in the U.S. Android OS app store market, which
9 ensures that the vast majority of Android OS mobile and tablet owners will purchase paid apps and
10 in-app items from Google Play.

11 62. Cornering the market for Android OS app stores translates to colossal profits, as
12 alleged herein.

13 **1. Google was recently fined over \$5 billion for practices related to Google Play.**

14 63. As previewed above, Google's anticompetitive behavior, grounded in its voracious
15 appetite for profit derived from its Android ecosystem, recently led to a €4.34 billion, or \$5.1 billion,
16 fine from the European Commission.⁶⁷

17 64. As the Commission explained, Google bought "the original developer of the Android
18 operating system [in 2005] and has continued to develop Android ever since."⁶⁸ "When Google
19 develops a new version of Android it publishes the source code online." But

20 [t]he openly accessible Android source code covers basic features of a smart
21 mobile operating system . . . not Google's proprietary Android apps and services.
22 Device manufacturers who wish to obtain Google's proprietary Android apps and
23 services need to enter into contracts with Google, as part of which Google imposes a
24 number of restrictions. Google also entered into contracts and applied some of these
25 restrictions to certain large mobile network operators, who can also determine which
26 apps and services are installed on devices sold to end users.⁶⁹

27

28 ⁶⁶ *Id.* (emphasis added).

29 ⁶⁷ See http://europa.eu/rapid/press-release_IP-18-4581_en.htm (last accessed Aug. 15, 2020).

30 ⁶⁸ See n. 65, *supra*.

31 ⁶⁹ *Id.*

1 65. Thus, a manufacturer of an Android OS smartphone or tablet must obtain a license
 2 from Google to pre-load popular Google apps including YouTube,⁷⁰ Google Maps, Gmail, and
 3 Google Play, among others, all of which come bundled in a take-one/take-all suite.⁷¹ Google knows
 4 that buyers of Android OS devices expect to see popular Google apps such as YouTube and Google
 5 Maps pre-loaded onto their phones and tablets. This bundling practice, which is not grounded on any
 6 technical need, ensures an enormous and growing base of Google Play installations and users. It also
 7 reinforces the notion that Google Play is the official Android store, even though competing app
 8 stores could serve their needs equally well—if Google didn’t unfairly shut them out of the market.

9 66. As the European Commission’s findings illustrate, Google’s aggressive use of GMS,
 10 including Google Play; its refusal to distribute competing app store clients via Google Play; and its
 11 anti-fragmentation terms, which have the effect of depressing forked Android OS system
 12 distribution, thereby further inhibiting the distribution of competing app stores (such as Amazon’s
 13 Fire OS and Appstore), have led to its 90%+ share of the market for Android OS app stores.⁷² As
 14 none of Google’s management is either technically or economically necessary, it is plain that Google
 15 has maintained monopoly power in the market through anticompetitive means, which has enabled it
 16 to maintain the supracompetitive 30% transaction fee that it charges developers on Google Play app
 17 and in-app product sales.

23 ⁷⁰ Consumers want and expect the YouTube app on their Android OS devices. In fact, a 2013
 24 study confirmed that smartphone users prefer to view video with apps such as the YouTube app
 25 versus viewing via their browsers (*i.e.*, by browsing to the YouTube website and viewing video
 there). (“Do Smartphone Users View Video with YouTube App or Browsers?” dated March 29,
 2013, available at: <https://jmango360.com/wiki-pages-trends/mobile-app-vs-mobile-website-statistics/> (last accessed Aug. 17, 2020).)

26 ⁷¹ See, e.g., “The best of Google, right on your devices—Google Mobile Services brings
 27 Google’s most popular apps and APIs to your Android devices,” available at:
<https://www.android.com/gms/> (last access date cited above).

28 ⁷² See *id.*

1 **2. Google has used contracts with device manufacturers as means to its
2 anticompetitive ends.**

3 67. Previously, leaked copies of Google's contracts with device manufacturers, called
4 MADAs, provided details of Google's abusive market manipulation. Upon information and belief,
5 the same or similar contracts, or those with the same intent or restrictions, remain in play today.⁷³

6 68. If a smartphone or tablet manufacturer such as Samsung or HTC wishes, for example,
7 to pre-load Google's popular and exclusive YouTube app on a given Android OS phone or tablet,
8 then Google requires that the manufacturer agree via its MADA to pre-load Google Play on the
9 device as well. This results in a tremendous advantage for Google in that yet more devices will carry
10 its store client.⁷⁴

11 69. Additionally, such a manufacturer must agree via this contract that it will pass a so-
12 called Android Compatibility Test as to that device, which Google administers and controls in its
13 sole discretion.⁷⁵ This ties to Google's restraint on the production of devices using Android forks as

14
15 ⁷³ See <https://www.einfochips.com/blog/how-to-obtain-googles-gms-license-for-android-devices/#> (current website of company providing Android compatibility services to entities who want
16 to deploy Google's GMS suite and have already obtained a prospective MADA from Google) (last
accessed Aug. 15, 2020).

17 ⁷⁴ But Google is still not satisfied. In fact, Google Play competitors have faced other
18 anticompetitive behavior by Google. In 2014, for example, a Portuguese firm operating a much
19 smaller app store than Google Play filed an antitrust complaint with the European Commission
regarding Google's anticompetitive practices in the app store field. (*See, e.g.*,
20 <http://online.wsj.com/articles/google-faces-fresh-antitrust-complaint-in-europe-1402941192> (last
accessed Aug. 15, 2020).) According to *The Wall Street Journal*, “Aptoide claim[ed] that Google
creates obstacles for users to install third-party app stores onto its Android platform, bundles services
that are essential to its operating system with Google, and blocks access to Aptoide websites in its
21 Chrome Web browser.” (*Id.*)

22 Aptoide won an antitrust injunction against Google, as detailed below. (*See ¶ 92, infra.*)

23 ⁷⁵ See Complaint for Violation of the Sherman Act, Clayton Antitrust Act, California Cartwright
Act, and California Unfair Competition Law, *Feitelson v. Google Inc.*, Case No. 14-cv-02007, May
24 5, 2014 (N.D. Cal.) Ex. A (MADA between Google and Samsung), ¶¶ 2.1 (“Devices may only be
distributed if all Google Applications (excluding any Optional Google Applications) authorized for
distribution in the applicable Territory are pre-installed on the device, unless otherwise approved by
Google in writing.”), 2.7 (“The license to distribute Google Applications in Section 2.1 is contingent
upon the Device becoming an Android Compatible Device.”), 3.4 (providing that “Google Phone-top
Search must be set as *the default search provider for all search access points on the Device*
25 providing for the prime placement of Google Applications” (emphasis added) and also providing for
the prime placement of “Google Applications”), 3.8(c) (“Company shall configure Network Location
Provider to be the default network-based location provider on all Android Compatible Devices.”);
26 Ex. B (MADA between Google and HTC), ¶¶ 2.1 (same as ¶ 2.1 in Google-Samsung agreement), 2.7

1 their operating systems, which in turn restricts avenues for distribution of competing app-store
 2 clients, as discussed herein.⁷⁶

3 70. Plaintiff does not yet have sufficient information to identify all other manufacturers
 4 beyond Samsung and HTC that have, or have had, MADAs with Google containing these specific (or
 5 functionally equivalent) terms. But the Joint Submission of Corrected Exhibit List submitted in a
 6 matter called *Oracle v. Google* lists MADAs between Google and a who's who of Android OS
 7 device manufacturers, including LG and Sony.⁷⁷ Unfortunately, these MADAs are not available for
 8 public inspection because they were not entered into evidence in the case. It appears likely,
 9 however, that Google has insisted on similar arrangements with some or all of these other
 10 manufacturers, in violation of federal and state law, and to the detriment of competition and
 11 consumers.

12 71. Furthermore, Google also currently provides a long list of brands whose devices are
 13 equipped with the GMS suite (including, of course, Google Play).⁷⁸ As alleged herein, Google
 14 requires entry into a MADA or MADA-like contract to license GMS.

15 72. Because of Google's secrecy, plaintiff is unaware as to whether MADAs as such, or
 16 updated versions, continue to be the specific operative documents between Google and
 17 manufacturers. But plainly Google continues to bundle its apps, including Google Play, into a suite
 18 (the GMS suite) for U.S. distribution, and plainly they can only be licensed by contract.⁷⁹

19
 20
 21 (same as ¶ 2.7 in Google-Samsung agreement), 3.4 (same as ¶ 3.4 in Google-Samsung agreement),
 22 3.8(c) (same as ¶ 3.8(c) in Google-Samsung agreement).

22 ⁷⁶ See ¶¶ 47-50, 66.

23 ⁷⁷ See *Oracle America, Inc. v. Google Inc.* (N.D. Cal. No. 3:10-cv-03561), ECF No. 923 at
 24 entries 83-85, 286, 2742-56, and 2772-93.

25 ⁷⁸ See <https://www.android.com/certified/partners/> (last accessed Aug. 15, 2020).

26 ⁷⁹ See <https://www.android.com/gms/> (referring to Google Mobile Services (GMS)—“a
 27 collection of Google applications and APIs that help support functionality across devices.”) (last
 28 accessed Aug. 15, 2020). As Google puts it, “While the Android Open Source Project (AOSP)
 provides common, device-level functionalities such as email and calling, GMS is not part of AOSP.
 GMS is only available through a license with Google and delivers a holistic set of popular apps and
 cloud-based services. . . .” (*Id.*) Further, Google “ask[s] GMS partners to pass a simple
 compatibility test and adhere to [its] compatibility requirements for their Android devices. . . .” (*Id.*)

1 73. Google is willing to run afoul of antitrust and unfair competition law because of the
 2 importance of its Google Play client. Google uses its MADAs or similar contracts to restrain and
 3 quash competition in the Android OS app store market. There is no lawful reason to compel
 4 manufacturers wishing to pre-load the YouTube or Google Maps app onto a device, to pre-load
 5 Google Play as well. These restraints give Google a *de facto* monopoly because most users won't
 6 know how to, or will not, sideload an alternative app store onto a phone (if they even know that is a
 7 possibility). Google's practice is a pure power play designed to maintain and extend its monopoly in
 8 the Android OS app store market. Its aim, of course, is to impose its super-high 30% transaction fee
 9 on developers who have no choice but to pay it.

10 **G. Google's practices with respect to Google Play further restrain and injure competition
 11 in the market for U.S. Android OS app stores, where already there are high barriers to
 entry.**

12 **1. There are high barriers to entry into the market for Android OS app stores.**

13 74. Google's unlawful practices in aid of its monopoly restrain and injure competition in
 14 the Android app store market, where already there are high barriers to entry.⁸⁰ A market-participant
 15 hopeful must have the resources: to build and maintain the app store client, to program and maintain
 16 the requisite software and algorithms going forward, to advertise the client and the steps needed to
 17 install it, to keep the marketplace safe, and to process payments at a high volume.

18 75. Google keeps the barriers high by refusing to permit distribution of alternative clients
 19 via Google Play, which is pre-installed on most Android OS devices by default thanks to Google's
 20 GMS bundling practices. It also keeps them from gaining users by distribution with Android forks,
 21 by way of its exclusionary Android anti-fragment terms.

22 76. The European Commission also has concluded that there are high barriers to entering
 23 the market for Android OS app stores.⁸¹ The same factors it cited as high barriers to entry in "the
 24

25 ⁸⁰ See also ¶¶ 54-55, 60, *supra*.

26 ⁸¹ See "Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android
 27 mobile devices to strengthen dominance of Google's search engine," available at:
 28 http://europa.eu/rapid/press-release_IP-18-4581_en.htm. (*Id.* ("Google is dominant in the worldwide
 market (excluding China) for app stores for the Android mobile operating system. Google's app
 store, the Play Store, accounts for more than 90% of apps downloaded on Android devices. This
 market is also characterised by high barriers to entry. . . .").) Further, while plaintiff's complaint is

1 worldwide market (excluding China) for licensable smart operating system,” where Google’s
 2 Android OS was estimated in 2018 to have “a market share of more than 95%,” apply as well with
 3 respect to entry into the U.S. market for Android OS app stores:

4 There are high barriers to entry in part due to network effects: the more users use a
 5 smart mobile operating system, the more developers write apps for that system –
 6 which in turn attracts more users. Furthermore, significant resources are required to
 7 develop a successful licensable smart mobile operating system.⁸²

8 **2. Google manipulates security fears in order to maintain and further its market**
 9 **power in U.S. Android OS app stores.**

10 77. But Google does not depend solely on high barriers to entry in the app-store
 11 marketplace. Instead, Google actively manipulates security fears in order to maintain and further its
 12 monopoly in U.S. Android OS stores.

13 a. **Google steers consumers to Google Play by scaring them away from**
 14 **alternative sources for Android OS apps.**

15 It isn’t enough for Google that Google Play is pre-installed on hundreds of millions of
 16 devices, such that it offers ready access to millions of apps⁸³—Google also steers consumers away
 17 from all alternative websites by issuing security warnings from the official Android website.⁸⁴ The
 18 message is that Google Play is safe and protects users; other app stores are very risky, and to be
 19 avoided. In its “Download apps to your Android device guidance,” Google writes:

- 20 • You can download free and paid apps from Google Play on your Android Phone. We
 21 recommend that you get apps from Google Play. You can also get them from other
 22 sources.
- 23 • Your phone has a security setting (*Google Play Protect*) that checks for potentially
 24 harmful apps, warns you, and removes apps if necessary. Learn how to help protect
 25 against harmful apps.
- 26 • Download apps from other sources

27 not based on Google search dominance, nonetheless, Google search is germane because Google Play
 28 is bundled with Google search products, which has aided in achieving Google Play’s monopoly
 29 status in the U.S.

82 *Id.*

83 <https://www.statista.com/statistics/266210/number-of-available-applications-in-the-google-play-store/> (“The number of available apps in the Google Play Store was most recently placed at 2.96 million apps in June 2020, after surpassing 1 million apps in July 2013.”) (last accessed Aug. 15, 2020).

84 https://support.google.com/android/answer/7391672?hl=en&ref_topic=7311596 (last accessed Aug. 15, 2020).

1 **Important:** If you download apps from unknown sources, your device and
2 personal information can be at risk.

3 - Your phone could get damaged or lose data.
4 - Your personal information could be harmed or hacked.

5 • Help Google protect against bad apps from other sources

6 If you install apps from outside of Google Play, your phone can send Google
7 information about those apps.

8 This information helps Google better protect everyone from harmful apps. The
9 information can include log information, URLs related to the app, device ID,
10 Android version, and IP address.⁸⁵

11 78. Google issues these warnings indiscriminately. Like Google Play, the Amazon
12 Appstore is monitored and curated.⁸⁶ But no matter. According to Google, it's really too risky to
13 use (assuming the consumer even knows about it). These warnings ring hollow, however, for
14 Google Play itself has proven vulnerable to malware that could harm consumers,⁸⁷ in spite of
15 Google's high revenues and profits from which it could draw to better protect its users.

16 b. **Google will not permit distribution of alternative app-store clients via
17 Google Play on the false premise that it is too risky for consumers.**

18 79. In order to become a viable app store, a market hopeful must find a way to persuade
19 Android device owners to sideload the client onto their phones or tablets—after first making a
20 sizeable number aware of its existence. This is no easy task. Users must take obscure and
21 unnecessary steps to access other app stores because Google has decreed it so in order to protect its
22 monopoly power in Android OS app sales. Google will not permit distribution of alternative app-
23 store clients via the *de facto* Google Play acquisition and installation method because it falsely
24 claims that it would be too risky for consumers if it did.

25 ⁸⁵ *Id.* (emphasis added).

26 ⁸⁶ See, e.g., “Amazon Appstore Content Policy,” available at:
27 <https://developer.amazon.com/docs/policy-center/understanding-content-policy.html> (last accessed
28 Aug. 15, 2020).

29 ⁸⁷ See, e.g., “Android security: Malicious apps sneak back into Google Play after tweaks,” May
30 9, 2018, available at: <https://www.zdnet.com/article/android-security-malicious-apps-sneak-back-into-google-play-after-tweaks/> (last accessed Aug. 15, 2020).

1 80. In its “Understanding Android” piece, Google states as “Android Fact #12”⁸⁸:
 2 “Because third-party stores don’t always adhere to the strict Google Play Store security checks for
 3 apps, Google Play doesn’t allow other app stores to be downloaded directly through the Play
 4 Store. . . .” But this self-serving justification does not withstand scrutiny.

5 81. First, Google offers no explanation for shutting out *all* app-store clients from Google
 6 Play, including those run by well-resourced companies such as Amazon or Samsung. Further,
 7 Google could scrutinize each app-store client as it does other apps before allowing it into Google
 8 Play.

9 82. And second, Google itself touts initiatives to safety-check and even quarantine or
 10 delete *all* apps on Android OS devices, wherever they are obtained. For example, in its February
 11 2016 white paper titled, “How we keep harmful apps out of Google Play and keep your Android
 12 device safe,”⁸⁹ Google states:

13 Even though we do a lot of work to make Google Play apps safe before they
 14 reach you, Google works hard to protect you—no matter where your app comes from.
 15 We sandbox each application to constrain bad behavior and if an app wants new
 16 permissions, we ask you to confirm at runtime.

17 In addition to multiple layers of security built into the platform, Android also
 18 includes a feature called Verify Apps. Verify Apps continually scans for potentially
 19 harmful apps. If an app is discovered later to be potentially harmful, Verify Apps will
 20 disable the app and request for you to remove it.

21 Verify Apps also checks apps you install from outside of Google Play. If we
 22 see an app that looks malicious, we warn you before the installation proceeds. Verify
 23 Apps is available on every Android device (2.3+) that has Google Play installed.⁹⁰

24 83. As for its more security regime, Google Play Protect, the defendant assures:

25 Google Play Protect helps you keep your device safe and secure.

- 26 - It runs a safety check on apps from the Google Play Store before you
 27 download them.
- 28 - It checks your device for potentially harmful apps from other sources.
 29 These harmful apps are sometimes called malware.

⁸⁸ <https://www.android.com/everyone/facts/> (last accessed Aug. 15, 2020).

⁸⁹ This white paper was linked from the Understanding Android piece cited in paragraph 80 of this complaint.

⁹⁰ <https://docplayer.net/15116445-How-we-keep-harmful-apps-out-of-google-play-and-keep-your-android-device-safe.html> at 4 (last accessed Aug. 15, 2020).

- 1 - It warns you about any detected potentially harmful apps found, and
- 2 removes known harmful apps from your device.
- 3 - It warns you about detected apps that violate our Unwanted Software
- 4 Policy by hiding or misrepresenting important information.
- 5 - It sends you privacy alerts about apps that can get user permissions to
- 6 access your personal information, violating our Developer Policy.⁹¹

6 84. If these assurances are to be believed, then Google already monitors the security of all
 7 apps that would be obtained from any competing app store. These assurances, therefore, alone or
 8 coupled with the vetting that Google already performs before releasing any app in Google Play,
 9 undercut Google's stated reason for keeping all competing app-store clients out of Google Play.

10 **3. Google's refusal to permit app-store clients into Google Play means that only a
 11 hardy few will attempt installation of alternative stores.**

12 85. By keeping other app-store clients out of Google Play, and by scaring potential users,
 13 Google assures that only a hardy few will ever attempt to load another app store front onto their
 14 Android OS devices.

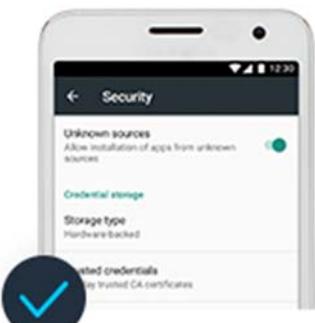
15 86. The following is an example of the steps Android device consumers must take if they
 16 wish to do so—assuming they ever learn of the alternative store's existence, and assuming they
 17 consider themselves technically savvy enough to try. To access the Amazon Appstore, consumers
 18 must first obtain a link from an Amazon website. Then the consumer must do the following:



Download Amazon Appstore

91 https://support.google.com/android/answer/2812853?p=playprotect_download&hl=en&visit_id=636801711322579028-4051903200&rd=1 (last accessed Aug. 15, 2020).

- 1 1. Use link sent to you in email to navigate to the Amazon Appstore download
- 2 page
- 3 2. Tap on "Get Amazon Appstore" button
- 4 3. Follow instructions



Step 2

Enable Unknown Sources

- 1 1. In your phone Settings page, tap on "Security" or "Applications" (varies with device)
- 2 2. Enable "Unknown Sources" permission
- 3 3. Confirm with "OK"



Step 3

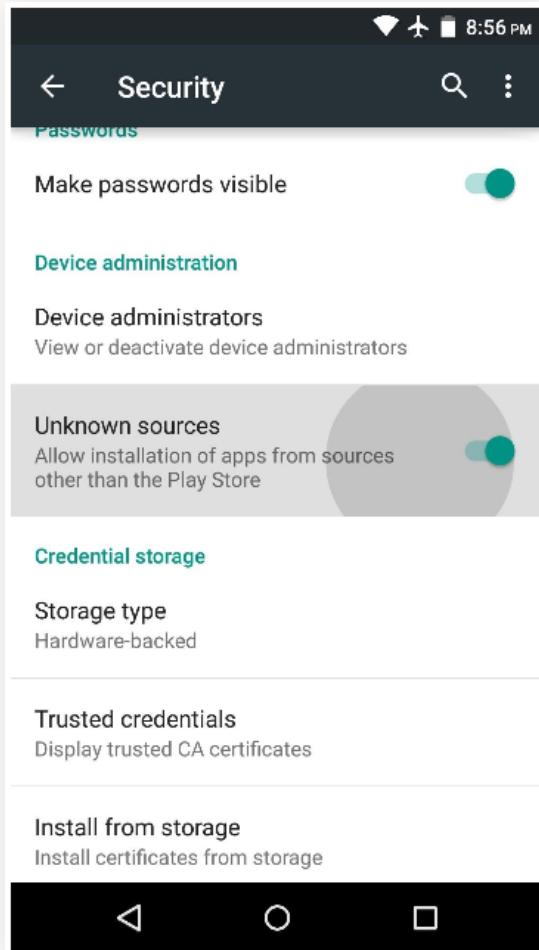
Install and Launch Amazon Appstore

- 1 1. In your device's "Download" folder, find and tap on the "Amazon_app.apk" file
- 2 2. Tap "Install" on the Android Installer screen
- 3 3. Launch the Amazon Appstore⁹²

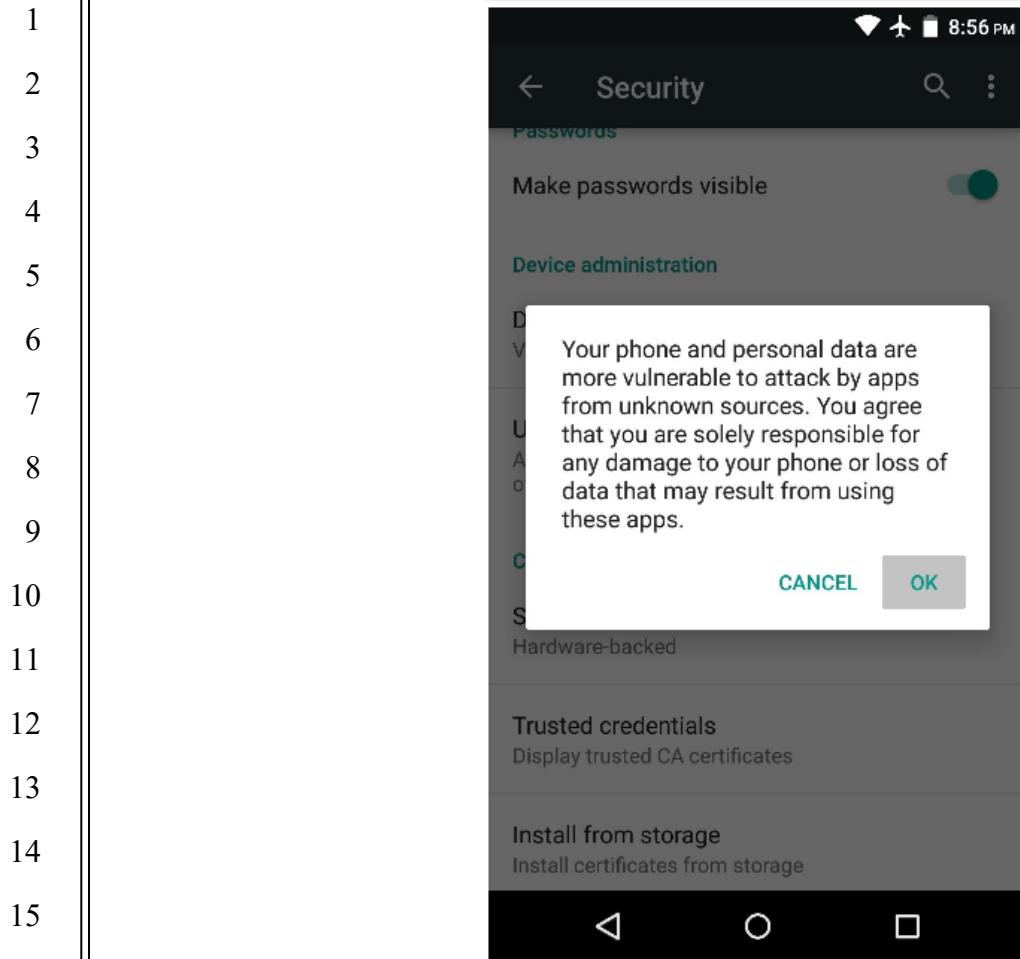
23 87. Because of Google's refusal to allow competitors to distribute app-store clients via
24 Google Play, and because of Android's security features—whose configuration Google controlled as
25

26 ⁹² https://www.amazon.com/gp/feature.html/ref=sxts_snpl_1_1_b122686d-95c7-451e-a41b-8f08ca46cdcb?pf_rd_p=b122686d-95c7-451e-a41b-8f08ca46cdcb&docId=1000626391&pf_rd_r=ZSYBJ5ZEY4SCVPB0YXB5&pd_rd_wg=Ou2nJ&pd_rd_w=l6Ci1&qid=1597568508&pd_rd_r=1f985501-51cf-4e11-8fdc-4d076ac56dbb (last accessed Aug. 15, 2020).

1 the leader of the AOSP—consumers wishing to install an alternative app store had to be willing to
 2 turn on the “Unknown Sources” permission referenced in Amazon’s Step 2 above. In Android
 3 versions released before the Oreo variant, the user first had to find a screen looking like this:



19
 20 88. Then, if she opted to turn the switch to the right, she would be greeted with this
 21 ominous warning:
 22
 23
 24
 25
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 28



If she dared to leave the “Unknown sources” toggle to the on position, she would then have opened her device to all sorts of vulnerabilities—all because she wanted to use another app store to buy apps that might be cheaper than the purchase price in Google Play.

89. As of Android 8.0, code-named Oreo, Google has changed the permissions structure so that users can authorize downloads from only one source at a time.⁹³ It is believed, and therefore alleged, that many Android OS devices in operation today still run on pre-Oreo Android versions, with their scary app permission toggle and warning. But even with the change brought with Oreo, Google knows and intends that most device users will not know how to access stores and apps

⁹³ (<https://www.android.com/versions/oreo-8-0/>) (“Hostile downloader apps can’t operate without permission; users now permit the installation of APKs per-source.”) (last accessed Aug. 15, 2020.) Oreo was not released to the public until August 21, 2017. (<https://android-developers.googleblog.com/2017/08/introducing-android-8-oreo.html>) (last accessed Dec. 10, 2018.) As of October 26, 2018, well over a year later, Oreo’s worldwide install base was at a mere 21.5%, not counting China. (<https://developer.android.com/about/dashboards/>) (last accessed Dec. 10, 2018.).)

outside of Google Play, and it knows and intends that they still will be frightened away by having to change a permission switch, given its continued warnings in various guises. For example, users who wish to sideload might see this warning (after first receiving a pre-warning): “Your phone and personal data are more vulnerable to attack by unknown apps. By installing apps from this source, you agree that you are responsible for any damage to your phone or loss of data that may result from their use.”⁹⁴ Such is the case no matter how reputable the store operator (or other developer). The message Google is plain: you should not risk it; better to stay with Google Play.

- Even if a consumer succeeds in loading an alternative app-store client onto his or her device, Google may try to shut down access, which harms competition and developers.

90. If all else fails—if a consumer learns of another app store, figures out how to acquire the client, educates herself on how to install it, and steals himself against Google’s dire security warnings, Google may attempt to shut down the consumer’s access.

91. Aptoide is a competing Android OS app provider.⁹⁵ As such, Google has denied it distribution via Google Play.

92. Google forced Aptoide to go to court to seek an antitrust injunction for sweeping up its distribution app in its Google Play Protect sweeps. And Aptoide won. According to Aptoide's press release:

EU National Court rules against Google in Anti-Trust process

Lisbon, October 19th, 2018

The Portuguese Courts issued today a decision against Google in relation to the injunction filed by Aptoide. It is applicable on 82 countries including UK, Germany, USA, India, among others. Google will have to stop Google Play Protect from removing the competitor Aptoide's app store from users' phone without users' knowledge which has caused losses of over 2.2 million users in the last 60 days.

The acceptance of the injunction is totally aligned with Aptoide's claim for Google to stop hiding the app store in the Android devices and showing warning messages to the users. Aptoide is now working alongside its legal team to next week fill in courts the main action, demanding from Google indemnity for all the damages caused.

⁹⁴ “Android Q currently disables ‘Install unknown apps’ permission after every use,” available at <https://9to5google.com/2019/04/04/android-q-install-unknown-apps/> (last accessed Aug. 17, 2020).

⁹⁵ <http://www.aptoide.com/>.

1 This action is part of a complaint against foul play by Google, directed to Android's
 2 antivirus software, Google Play Protect. Google's anti-malware system was wrongly
 3 identifying Aptoide as a potentially malicious app, hiding and uninstalling it from
 4 Android smartphones without user consent.

5 Aptoide, with over 250 million users, 6 billion downloads and one of the top stores
 6 globally, also presented last July, a formal complaint to the European Union's anti-
 7 trust departments against Google.

8 Paulo Trezentos, Aptoide's CEO, says that "For us, this is a decisive victory. Google
 9 has been a fierce competitor, abusing his dominant position in Android to eliminate
 10 App Store competitors. Innovation is the reason for our 200 million users base. This
 11 court's decision is a signal for startups worldwide: if you have the reason on your side
 12 don't fear to challenge Google."

13 According to Carlos Nestal, head of the legal team that worked in the case:

14 "This case, to our knowledge, is the first of an EU national Court that enforces a clear
 15 separation of Android layer and the Services layer. Court is clearly stating that
 16 Google's control of the Operating System cannot be used as a competitive advantage
 17 in the Services market. We believe this may apply to other situations where Google
 18 has competition."⁹⁶

19 93. Reports indicate that Samsung's small app store also was caught up in Google's
 20 dubious security net. As androidsage.com reported on June 18, 2018, "[S]ince today, a bunch of
 21 Samsung users have reported of Google Play Store flagging the official Samsung Galaxy App Store
 22 as potentially dangerous and fake at the extent of even blocking it."⁹⁷ This action no doubt resulted
 23 in some number consumers fleeing the store rather than risking continued access to it. But for those
 24 who wanted to keep it, androidsage.com offered a "temporary fix" for those inclined to disregard
 25 Google's warnings.⁹⁸

26 94. There is no good reason that a company as technologically sophisticated as Google
 27 could not whitelist or otherwise continue to permit unimpeded access to competitors' app stores on
 28 Android OS devices, including those run by well-known operators such as Amazon and Samsung.
 Again, Google is bound and determined to maintain its ill-gotten monopoly market power which
 allows it to impose its default 30% transaction fee on developer approved in-app product sales.

⁹⁶ Press release available at, *inter alia*: <https://www.androidpolice.com/2018/10/23/aptoide-gains-injunction-google-latest-antitrust-case-compensation-follow/> (last accessed Aug. 15, 2020).

⁹⁷ <https://www.androidsage.com/2018/06/18/google-play-protect-blocking-galaxy-app-store-how-to-fix/> (last accessed Aug. 15, 2020).

⁹⁸ See *id.*

1 **H. Google's unlawful practices harm developers and competition.**

2 95. Google's practices in aid of maintaining or attempting a monopoly in the Android OS
 3 app store market harm developers and competition by depressing output of transactions in the U.S.
 4 market for Android OS app stores. They also directly harm developers by requiring them to pay
 5 supracompetitive distribution fees.

6 **1. Google's behavior stifles innovation.**

7 96. Google's abusive behavior also stifles innovation in the U.S. market for Android OS
 8 app stores.⁹⁹

9 97. For example, Amazon devised an alternative way of distributing Android OS apps,
 10 Amazon Underground, which makes apps and in-app purchases "actually free" to consumers.¹⁰⁰
 11 Amazon pays developers according to how much time consumers spend interacting with the apps.¹⁰¹
 12 Yet Google's developer terms will not allow Amazon to distribute the client for this app via Google
 13 Play (even as Amazon distributes several other apps through the store).¹⁰²

14 98. In fact, shortly after Amazon introduced Amazon Underground by integrating it into
 15 its larger shopping app, Google changed its developer terms to prohibit distribution of an app store in
 16 that manner.¹⁰³ This forced Amazon to remove its Appstore from its shopping app—and to lose that
 17 promising avenue of distribution.

20
 21 ⁹⁹ E.g., Stephen D. Houck, *Injury to Competition/Consumers in High Tech Cases*, St. Johns L.
 22 Rev. Vol. 5, Iss. 4, 593, 598 (2001) ("Any assessment of a restraint's anticompetitive impact,
 23 however, will be incomplete if limited to price and output effects. The restraint's impact on
 consumer choice and innovation must also be considered.").

24 ¹⁰⁰ See, e.g., "Amazon Underground innovates with free apps but faces challenges," available at
<https://technology.informa.com/550085/amazon-underground-innovates-with-free-apps-but-faces-challenges> (last accessed Oct. 7, 2015).

25 ¹⁰¹ *Id.*

26 ¹⁰² *See id.*

27 ¹⁰³ See, e.g., "[Update: Confirmed] Google Forced Amazon To Remove Its Main Shopping App
 28 From The Play Store Because Of Its Appstore Integration," Dec. 11, 2014, available at:
<https://www.androidpolice.com/2014/12/11/google-may-have-forced-amazon-to-remove-its-main-shopping-app-from-the-play-store-because-of-its-appstore-integration/> (last accessed Dec. 10, 2018).

1 99. Surely Google's aggressive, anticompetitive behavior is one reason why Amazon
 2 shuttered Amazon Underground in 2019.¹⁰⁴ Industry analysts perceived Amazon's extreme uphill
 3 battle from the outset. One put it this way:

4 The first issue is scale. For a system like this you need critical mass and scale
 5 in terms of audience and content. Amazon's hands were tied because they weren't able
 6 to make Underground readily available on iOS (obviously) or Google devices.

7 That means they were always going to be limited to those people with Fire
 8 devices or who were motivated enough to use more than one app store. . . .¹⁰⁵

9 100. Another analyst put it thus:

User acquisition is still the biggest challenge

10 Amazon's revamped plans offer app publishers an innovative new model for
 11 monetising certain apps but it may not be enough to address its major challenge: how
 12 to persuade Android users to download an alternative store to Google Play. . . .

Strong app store competition

13 The app store competition is extremely strong. The Google Play Store offers a
 14 catalogue of more than one million apps (far greater than Amazon) and comes
 15 preinstalled on almost all Android smartphones outside China. The Google Play store
 16 is more than sufficient for most users' needs and Google reported more than 1.4bn
 17 active devices in September 2015.

18 Beyond Amazon's own Fire branded smartphone (now discontinued) and
 19 tablets, Amazon's store does not come preinstalled on any devices¹⁰⁶ and so app
 20 publishers correctly focus first on providing content for Google's store rather than
 21 Amazon's.

22 To download the Amazon Underground app, as with its previous Appstore for
 23 Android, users have to change their Android permissions to enable non-Google Play
 24 downloads which is a step too far for most customers. Amazon needs to have its store
 25 pre-installed on Android smartphones if it is to drive increased adoption. Smartphone
 26 brands that wish to reduce their dependency on Google should be open to such a
 27 relationship.

Other stores are unlikely to follow suit, for now

28 ¹⁰⁴ See, e.g., "Why is Amazon shutting down its Underground Initiative?" May 9, 2017, available at: <https://www.pocketgamer.biz/mobile-mavens/65694/why-is-amazon-shutting-down-its-underground-initiative/> ("It was part of a long-term strategy with bold ambitions to change the way mobile developers made games, but two years on Amazon has announced that Underground will no longer feature on the Amazon Appstore as of Summer 2017, with the program officially ending in 2019.") (last accessed Aug. 15, 2020).

29 ¹⁰⁵ Id. (quoting Oscar Clark, "Author, Consultant and Independent Developer Rocket Lolly Games").

30 ¹⁰⁶ This was as of October 2015, when the referenced article was published.

1 Amazon's Underground app program is a response challenging market
 2 position. As a challenger store with limited market share, Amazon has to innovate to
 3 attract users. It also needs to give developers a reason to provide content for its store.
 4 Amazon can offset the costs of running the Underground program by tying its users
 5 more closely into its ecosystem and driving retail transactions and other content
 6 revenues; Amazon Prime Video and its retail store are available alongside mobile
 7 apps in Underground. Market leaders Apple and Google do not struggle to attract
 8 users or app publishers and the share they take from app transactions have become
 9 significant revenue streams, so there is no incentive for them to adopt a similar
 10 program.¹⁰⁷

11 101. And as Google has done what it can to shut out even a well-resourced potential
 12 competitor such as Amazon, Amazon itself continues to soldier on by way of its Amazon Coins
 13 program, which allows consumers to buy apps at a discount in the Amazon Appstore.¹⁰⁸ For
 14 example, on Aug. 15, 2020, the popular game Minecraft for Android OS is priced at the same
 15 nominal sum of \$6.99 in both Google Play and the Amazon Appstore.¹⁰⁹ But by using Amazon
 16 Coins, a purchaser could save 20%, bringing her price to approximately \$5.59:

Minecraft

17 by Mojang
 18 Rated: Guidance Suaested
 19 [4.4 out of 5 stars](#)[83,176 customer ratings](#)

20 Price: **\$6.99**

21 Save up to 20% on this app and its in-app items when you purchase **Amazon**
 22 **Coins.** [Learn More](#)

23 ¹⁰⁷ See "Amazon Underground innovates with free apps but faces challenges," Oct. 7, 2015,
 24 available at: <https://technology.ihs.com/550085/amazon-underground-innovates-with-free-apps-but-faces-challenges> (last accessed Aug. 15, 2020).

25 ¹⁰⁸ Amazon's presumptive revenue split in its own Appstore is also 70% developer / 30% store
 26 operator, as with Google and Apple. On the other hand, its Amazon Coins program allows
 27 consumers to save money on the purchase price of apps everyday while developers continue to earn
 28 their 70% developer share. (See https://www.amazon.com/dp/B018HB6E80/ref=twister_B009CDKIA8?_encoding=UTF8&psc=1#where (explaining Amazon Coins programs and noting: "The More You Buy, the More You Save. Amazon Coins come in denominations from 300 to 50,000 Amazon Coins. Bigger denominations always have bigger discounts. The savings on an order of 50,000 Coins is always larger than on an order of 300 Coins."); <https://www.amazon.com/Amazon-Coins-Apps-Games/b?ie=UTF8&node=13927674011> (more on Coins program) (last accessed Aug. 17, 2020).

29 ¹⁰⁹ Compare <https://play.google.com/store/apps/details?id=com.mojang.minecraftpe> (last
 30 accessed Aug. 15, 2020) with, https://www.amazon.com/Mojang-Minecraft/dp/B00992CF6W/ref=sr_1_1?s=mobile-apps&ie=UTF8&qid=1549260798&sr=1-1&keywords=minecraft (last accessed Aug. 15, 2020).

1 Sold by: Amazon.com Services LLC.¹¹⁰

2 102. Unfortunately, there is no evidence that any of these innovative programs has dented
3 Google's market share to any serious degree, which is not surprising considering Google's abusive
4 behavior, including its refusal to permit access via Google Play.

5 103. Google's hogging of the U.S. app-store market also stifles innovation in apps—
6 another way it hurts competition generally. Other vibrant app stores would mean more places for
7 featuring apps. With so many apps available on the market, product can and does get lost in Google
8 Play. Developers and competition generally, not to mention individual end-users, would benefit
9 from other venues that would surface good, new product and encourage the development of yet more
10 and better apps—all of which would engender more output in the market here at issue.

11 **2. Google harms developers by killing competition and diminishing
12 consumer choice.**

13 104. Google's aggressive, anticompetitive behavior diminishes the choice offered by
14 endeavors such as Amazon Underground, which lowered prices (even to zero, with its Actually Free
15 component), while also offering developers another way to earn from their work. If even another
16 corporate giant could not make the model work given Google's policies and the Google Play
17 behemoth, there is little hope for other prospective competitors to gain significant market share
18 unless Google is required to change its contracts and practices.

19 **3. Google also harms developers and competition by depressing output.**

20 105. Evidence shows that consumers of app-store products are quite price sensitive.¹¹¹
21 Google's high transaction fees, therefore, inhibit sales of products sold via Google Play, which has

22 ¹¹⁰ https://www.amazon.com/Mojang-Minecraft/dp/B00992CF6W/ref=sr_1_2?dchild=1&keywords=minecraft&qid=1597603583&s=mobi-le-apps&sr=1-2 (last accessed Aug. 16, 2020).

23 ¹¹¹ See, e.g., "The History of App Pricing, And Why Most Apps Are Free," July 18, 2013,
24 available at: <https://flurrymobile.tumblr.com/post/115189750715/the-history-of-app-pricing-and-why-most-apps-are> ("Conventional wisdom (backed by a variety of non-Flurry surveys) is that
25 Android users tend to be less affluent and less willing to pay for things than iOS users. Does the app
26 pricing data support that theory? Resoundingly. As of April 2013, the average price paid for
27 Android apps (including those where the price was free) was significantly less than for iPhone and
28 iPad apps") (last accessed Aug. 15, 2020); "Only 33% of US Mobile Users Will Pay for Apps
This Year," Feb. 5, 2015, available at: <https://www.emarketer.com/Article/Only-33-of-US-Mobile-Users-Will-Pay-Apps-This-Year/1011965> ("Put a dollar sign in front of an app, and the number of

1 the lion's share of the U.S. market for Android OS app stores.¹¹² In other words, they depress
 2 output. Developers understand that paying Google's high distribution fees denies them the ability to
 3 lower prices as they choose, which deters many from investing in app development and distribution.
 4 Thus, output is depressed.

5 106. Furthermore, Google crams too many apps into what is the monopoly Google Play
 6 store. With so many apps in one store, consumers cannot discover the vast majority of them. They
 7 are lost in the forest. Google's monopoly practices render it impossible to maintain viable alternative
 8 stores at any scale; therefore, there are no reasonable alternatives for surfacing good apps elsewhere.
 9 Again, because of the way in which Google willfully makes sideloading a non-alternative for the vast
 10 majority of consumers, output is depressed by way of the hiding of apps through overcrowding in
 11 Google Play.

12 107. Google's \$.99 minimum price for U.S. app sales also depresses output. Google itself
 13 recognizes this by way of contractual terms that permit lower minimum prices in 18 other
 14 countries¹¹³: lower prices move more apps. Again, developers lose volume and real money as a
 15 result. There is no good or pro-competitive reason to deny them pricing flexibility for minimum-
 16 priced apps.

17 **4. Google harms developers by causing supracompetitive pricing of distribution
 18 services for Android OS apps and in-app add-ons, including subscriptions.**

19 108. There is no good, pro-competitive, or otherwise justified reason for the 30% fee that
 20 Google charges to U.S. app developers for app and in-app product distribution services, the rate of
 21 which it has maintained since the opening of its Android OS app store.¹¹⁴ Nor is there justification

22 people who are willing to download and install it drops dramatically. According to a new forecast
 23 from eMarketer, 80.1 million US consumers will pay for mobile apps at least once this year,
 representing only 33.3% of all mobile users.") (last accessed Aug. 15, 2020).

24 ¹¹² See ¶¶ 54-55, 60, *supra*.

25 ¹¹³ See, e.g., ¶ 40, *supra*.

26 ¹¹⁴ See, e.g., "A decade on, Apple and Google's 30% app store cut looks pretty cheesy," Aug. 29,
 27 2018, available at: https://www.theregister.co.uk/2018/08/29/app_store_duopoly_30_per_cent/
 ("Apple unveiled the App Store in July 2008, and Android Market the following month, opening
 with the first Android device that October. Apple set the 30 per cent rate, Google simply followed
 suit.") (last accessed Aug. 15, 2020); see also <https://support.google.com/googleplay/android-developer/answer/112622?hl=en> ((last accessed Aug. 15, 2020)).

1 for its 15% distribution-services fee as to certain subscriptions in place for over a year, the rate of
 2 which Google began to offer sometime in 2018. In fact, that Google offers the 15% rate for certain
 3 subscriptions only underscores the supracompetitive nature of Google's default 30% commission
 4 rate. This unnatural price stability, under the circumstances alleged herein, including what surely is
 5 the accrual of economies of scale and pertinent lower costs for various inputs as time has progressed,
 6 is a sure sign of Google's unlawful acquisition of monopoly power and the abuse of that market
 7 power. Google immediately imposes this charge on developers by way of its contracts of adhesion.

8 109. Nor do the circumstances give rise to any pro-competitive justification for Google's
 9 contractual terms requiring \$.99 minimum pricing for paid apps and in-app add-ons. This pricing
 10 mandate, too, is an abuse of Google's monopoly power.

30% default transaction fee

11 110. In spite of not having to carry physical inventory (as distinct from a mere bit of digital
 12 storage for uploaded content); having such a large and growing pre-install base for the Google Play
 13 store, which has multiplied not by building more physical stores but simply by replicating an app;
 14 and economies of scale that have grown over time, Google has continued to take from developers
 15 nearly a third of every dollar spent as a fee for all covered Google Play transactions. Given how
 16 large the market is, there is plainly enough revenue to support app-store functions while providing a
 17 healthy profit in the event the 30% transaction fee were lowered to a reasonable rate—one the market
 18 could generate on its own but for Google's improperly acquired monopoly in the U.S. market for
 19 Android OS app stores and the historic and ongoing abuses of its market power.
 20

Epic Games

21 111. In its August 29, 2018 article entitled, "A decade on, Apple and Google's 30% app
 22 store cut looks pretty cheesy," *The Register* raised several important points and asked as many hard
 23 questions with regard to Google's long-standing fee structure. The impetus for the article was the
 24 developer Epic Games' decision to distribute its popular Fortnite game to Android device owners
 25 outside of Google Play.¹¹⁵
 26

27 ¹¹⁵ https://www.theregister.co.uk/2018/08/29/app_store_duopoly_30_per_cent/ (last accessed
 28 Aug. 15, 2020). The article's subtitle and URL refer to a "duopoly." There is no duopoly in a legal

1 112. As reported in the article, Epic's CEO, Tim Sweeney, told *Forbes*¹¹⁶ that “[a]voiding
 2 the 30 percent [Google Play] ‘store tax’ is a part of Epic’s motivation.”¹¹⁷ “It’s a high cost in a
 3 world where game developers’ 70 per cent must cover all the cost of developing, operating, and
 4 supporting their games. And it’s disproportionate to the cost of the services these stores perform,
 5 such as payment processing, download bandwidth, and customer service.”¹¹⁸ In a previous *Register*
 6 article, Mr. Sweeney put it this way: “[F]rom the [developer’s] 70 percent, the developer pays all the
 7 costs, of developing the game, operating it, marketing it, acquiring users and everything else. For
 8 most developers that eats up the majority of their revenue.”¹¹⁹

9 113. After noting that one reader of a previous *Register* article had written: “I learned
 10 something. Google take[s] 30%. That is some serious gouging,” the later article stated: “More
 11 pertinently, after a decade, is the question why Apple and Google *still* take a 30 per cent cut. In a
 12 competitive marketplace, wouldn’t that rate have been whittled down over the years?”¹²⁰ Indeed.

13 114. While the scale of Epic’s own endeavor—not only the sale of Fortnite outside of
 14 Google Play, but ¹²¹a new game store for Android OS device owners—will be small compared to

15
 16 sense, given the incompatibility between Android OS apps on the one hand and Apple iOS apps on
 17 the other.

18 116 See “From ‘Fortnite’ To ‘Fallout 76,’ Publishers Are Sick Of Google, Apple and Steam’s
 19 Store Cuts, Aug.13, 2018, available at: <https://www.forbes.com/sites/insertcoin/2018/08/13/from-fortnite-to-fallout-76-publishers-are-sick-of-google-apple-and-steams-store-cuts/#1c118ff2578c> (last
 20 accessed Aug. 15, 2020) (“Epic announced that Fortnite would indeed be coming to Android, but it
 21 would not be sold through the Google Play store. Players would have to (somewhat clunkily)
 22 download it from Epic’s website on their phones, and the game would then update itself
 23 independently of the Play store going forward.”).

24 117 https://www.theregister.co.uk/2018/08/29/app_store_duopoly_30_per_cent/.

25 118 *Id.*

26 119 “Game over for Google: Fortnite snubs Play Store, keeps its 30%, sparks security fears, Aug.
 27 3, 2018,” Aug. 3, 2018, available at:
https://www.theregister.co.uk/2018/08/03/fortnite_security_fears/ (last accessed Aug. 15, 2020).
 28 The security fears of which the article also speaks could be avoided if Google Play permitted the
 distribution of alternative game-store clients through Google Play.

29 120 https://www.theregister.co.uk/2018/08/29/app_store_duopoly_30_per_cent/.

30 121 *Id.* The piece goes on to note that Amazon’s Appstore might be considered “fairly shabby”
 31 today, but points out that it might not remain so “if it could provide incentives to app developers to
 32 submit apps[.]” (Citation omitted). “Submitting to more than one app store has a very low marginal
 33 cost to the developer, so this would make a good proof point for any remedy.” (Citation omitted.)

1 Google Play, its owners have provided information illustrating the supracompetitive nature of
 2 Google's 30% transaction fee. For their own store, Epic will employ a 12% transaction fee.

3 115. This is plenty to achieve a reasonable profit, as explained by Epic's CEO. Per an
 4 *MCV* article entitled, "New Epic Games Store takes on Steam with just 12% revenue share – Tim
 5 Sweeney answers our questions"¹²²:

6 "While running Fortnite we [Epic] learned a lot about the cost of running a
 7 digital store on PC. The math is quite simple: we pay around 2.5 per cent to 3.5 per
 8 cent for payment processing for major payment methods, less than 1.5 per cent for
 9 CDN costs (assuming all games are updated as often as Fortnite), and between 1 and 2
 10 per cent for variable operating and customer support costs." Sweeney told us.

11 "Fixed costs of developing and supporting the platform become negligible at a
 12 large scale. In our analysis, stores charging 30 per cent are marking up their costs by
 13 300 to 400 per cent," he reveals. "But with developers receiving 88 per cent of
 14 revenue and Epic receiving 12 per cent, this store will still be a profitable business for
 15 us," he explains.¹²³

16 116. That a newcomer like Epic can run a store profitably with a 12% fee demonstrates
 17 how supracompetitive Google's 30% transaction fee truly is. Given Google's experience, huge pre-
 18 installation base for Google Play, and its other economies of scale, it's likely that Google could earn
 19 a healthy profit by charging even less than 12% per covered transaction.

20 117. Notably, Epic's CEO indicates above that the rates are "around 2.5 percent to 3.5
 21 percent . . . for major payment methods." Yet Google charges 30% as its Google Play default rate
 22 for in-app purchases (with some subscription rates at 15%, as referenced herein). And this matters
 23 deeply to Android developers. The ability for consumers to pay in-app is critical to app developers,
 24 who may otherwise forego purchasing app add-ons if they cannot readily do it with the developer's
 25 app.¹²⁴

26 118. Epic has repeatedly tried to do something about this rate, imposed by Google the
 27 monopolist, to no avail. In fact, only last week, Epic tried to offer a lower rate to consumers for
 28

25 ¹²² <https://www.mcvuk.com/business/new-epic-games-store-takes-on-steam-with-just-12-revenue-share-tim-sweeney-answers-our-questions> (dated Dec. 4, 2018) (last accessed Aug. 15, 2020).

26 ¹²³ *Id.*

27 ¹²⁴ Complaint for Injunctive Relief, *Epic Games, Inc. v. Google, et al.*, No. 20-cv-05671 (N.D. Cal.), filed Aug. 13, 2020, ECF No. 1, ¶ 134.

1 virtual currency in its popular Fortnite app for Android, which is distributed via Google Play.¹²⁵
 2 Epic offered consumers a choice: pay through Google's payment processing system, or pay 20% less
 3 through Epic's.¹²⁶ Within hours, Google, in an exercise of its enormous market power, responded by
 4 kicking Fortnite out of Google Play.¹²⁷

5 119. Epic responded by filing suit against Google later that day. Epic's complaint includes
 6 Sherman Act monopolization claims and state claims as well. It seeks injunctive relief against
 7 Google.¹²⁸

8 **Chrome Web Store**

9 120. Another comparator comes from Google itself. Google has for years operated the
 10 Chrome Web Store, whereby it sells certain apps for use on computers, such as Windows laptops and
 11 desktops.¹²⁹ Google's transaction fee for purchases of paid apps or in-app products is only 5%,¹³⁰
 12 not Google Play's 30%. There is no indication that the Chrome Web Store is an eleemosynary
 13 venture, or that Google is losing money by way of transaction fees set at 5%.

14 121. Tellingly, however, when so-called ARC apps are concerned, the fee goes up to 30%
 15 for in-app (and one-time¹³¹) payments. ARC stands for App Runtime for Chrome, which is a Google
 16 project introduced in 2014 to bring Android apps to devices running Google's Chrome OS.¹³²
 17 According to Google:

19 ¹²⁵ *Id.* ¶ 28.

20 ¹²⁶ *Id.*

21 ¹²⁷ *Id.* ¶ 29.

22 ¹²⁸ *Id.* ¶¶ 135-238.

23 ¹²⁹ See <https://chrome.google.com/webstore/category/extensions> (last accessed Aug. 15, 2020).

24 ¹³⁰ <https://developer.chrome.com/webstore/pricing#seller> (“Each time someone buys your app
 25 using Chrome Web Store Payments, Google charges you a 5% transaction fee. For example, if you charge \$1.99, you'll receive \$1.89; if you charge \$9.99, you'll receive \$9.49.”) (last accessed Aug. 15, 2020); <https://developer.chrome.com/webstore/money> (same transaction fee for in-app payments when using the Chrome Web Store API) (last accessed Aug. 15, 2020).

26 ¹³¹ This is evidently equivalent to charging some amount for the app itself. (See n. 135, *infra*.)

27 ¹³² “First set of Android apps coming to a Chromebook near you,” Sep. 11, 2014, available at:
 28 <https://chromeblog.googleblog.com/2014/09/first-set-of-android-apps-coming-to.html> (last accessed Aug. 15, 2020).

1 **Note:** In-app payments for ARC apps are subject to a 30% transaction fee. For
 2 example, if you charge \$1.99 for an item offered in an ARC app, you'll receive \$1.39.
 3 *This is to ensure a consistent pricing structure with in-app payments made in apps*
 4 *available on Google Play.* ARC does not currently support other purchase models
 including up-front payments, subscriptions and in-app version upgrades; as these
 types of purchases require provisioning from Google Play which is not currently
 enabled. . . .¹³³

5 In other words, Google *could* charge much less, but it is all-important for it to maintain the 30%
 6 Google Play fee.

7 **Minimum pricing**

8 122. The minimum price fixing that Google requires via its adhesive developer contract
 9 likewise is unlawful. Low-price apps sell especially well, but the developer contract will not allow
 10 regular pricing in the U.S. to fall below \$.99, to the detriment of developers who must forego
 11 volumes of lower-price sales.

12 **V. INTERSTATE TRADE AND COMMERCE**

13 123. The activities of Google as alleged in this complaint were within the flow of, and
 14 substantially affected, interstate commerce. Google Play sells distribution and payment-processing
 15 services across, and without regard to, state lines.

16 **VI. RELEVANT MARKETS**

17 **First relevant market**

18 124. The antitrust injuries alleged herein, including harm to developers and competition,
 19 have occurred in the U.S. market for distribution of Android OS apps, *i.e.*, for distribution services
 20 provided to U.S. Android App Developers.¹³⁴ This market is heavily dominated, to the point of
 21 monopoly status, by Google, including by way of its Google Play store, thanks to Google's willful
 22 and anticompetitive behavior as described in this complaint. As the European Commission has
 23 found, Google and Google Play, via various anticompetitive practices, have acquired some 90
 24

25 ¹³³ <https://developer.chrome.com/webstore/money> (last accessed Aug. 15, 2020).

26 ¹³⁴ Cf. "Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android
 27 mobile devices to strengthen dominance of Google's search engine," July 18, 2018, available at:
http://europa.eu/rapid/press-release_IP-18-4581_en.htm ("Google is dominant in the worldwide
 28 market (excluding China) for app stores for the Android mobile operating system. Google's app
 store, the Play Store, accounts for more than 90% of apps downloaded on Android devices.").

1 percent of the market worldwide in Android app stores.¹³⁵ There is no reason to believe that
 2 Google's share is less than that in the U.S. Accordingly, Google's share of the relevant market for
 3 Android app and in-app distribution services is believed, and therefore alleged, to have reached a
 4 similar level of dominance.

5 125. Competitors in the relevant market exist, such as Amazon, Aptoide, and Samsung, but
 6 they are weak in terms of their own market power. Each is and has been starved of competitive
 7 oxygen by Google's unlawful contracts, policies, and actions. None has made a serious dent in
 8 Google's market share.

9 126. Furthermore, due to the incompatibility of Apple's iOS with Google's Android OS,
 10 and the resultant incompatibility of iOS and Android OS apps; due to Google's status as a bottleneck
 11 retailer; and due, *inter alia*, to the high switching costs among end users, as well as plaintiff and
 12 putative class members, Apple's App Store and corresponding distribution services for iOS apps
 13 offers no competition to, and is not a substitute for, Google's distribution services for Android OS
 14 apps. Developers, industry, and governments understand that the Android market alleged herein is a
 15 discrete one, which Google monopolizes.

16 127. For the reasons alleged herein, including the foregoing, the relevant market is a
 17 single-brand market or, alternatively, a submarket of a larger market that includes, *inter alia*, Apple's
 18 iOS app distribution services.

19 128. Google's restraints on competition directly impact the U.S. market for Android OS
 20 distribution services as alleged herein. Google permits and encourages U.S. app developers to sell
 21 their apps via Google Play to non-U.S. nationals, and U.S. developers, including the plaintiff, do so.
 22 Upon information and belief, these developers' business relationship and dealings are primarily with
 23 Google LLC and Google Payment Corp., which are U.S. entities. Therefore, the Foreign Trade
 24 Antitrust Improvement Act does not apply. Alternatively, its exceptions apply, including because the

25
 26 ¹³⁵ See European Commission, *Google Android*, Case AT 40099, Commission Decision of 18
 27 July 2018, at 92-97, available at
https://ec.europa.eu/competition/antitrust/cases/dec_docs/40099/40099_9993_3.pdf (last accessed
 28 Aug. 17, 2020).

1 conduct alleged has a direct, substantial, and reasonably foreseeable effect on trade
 2 or commerce which is not trade or commerce with foreign nations.

3 129. Google is a direct seller of distribution services to Android developers for the sale of
 4 apps in or via the Google Play store and for add-ons and other products sold in those apps.¹³⁶

5 130. Plaintiff seeks relief on behalf of themselves and other developers. Insofar as Google
 6 Play may be or is a two-sided platform, lower prices would not lead to any discernible negative
 7 indirect network effects under the circumstances described herein. For example, unlike on credit-
 8 card transaction platforms, lower fees or prices would not mean less money available to pay rebates
 9 or rewards to consumers. To the contrary, Google does not share its transaction fees with
 10 consumers. Here, Google's restraints do not help to establish or enhance participation *inter se*
 11 developers and consumers, nor do they help to prevent erosion in participation. In fact, Google can
 12 point to no considerations that countervail the propriety of the monetary and injunctive relief that
 13 Plaintiff seeks.

14 **Second relevant market**

15 131. The antitrust injuries alleged herein, including harm to developers and competition,
 16 have occurred in the U.S. market for Android in-app payment processing, *i.e.*, for payment
 17 processing provided to U.S. Android App Developers.¹³⁷ Google has enormous power in this
 18 market, thanks to its willful and anticompetitive behavior as described in this complaint. As the
 19 European Commission has found, Google and Google Play, via various anticompetitive practices,
 20 have acquired some 90 percent of the market worldwide in Android app stores.¹³⁸ And with few
 21 exceptions, Google requires the use of its in-app payment system for in-app product distributions.

22
 23 ¹³⁶ See, e.g., <https://play.google.com/store> (offering various digital products to consumers for
 24 purchase, including apps, at various price points) (last accessed Aug. 15, 2020). The Google Play
 mobile client is installed on hundreds of millions of Android OS devices, as alleged herein, and
 similarly offers various products, including apps, for purchase and sale.

25 ¹³⁷ Cf. "Antitrust: Commission fines Google €4.34 billion for illegal practices regarding Android
 26 mobile devices to strengthen dominance of Google's search engine," July 18, 2018, available at:
http://europa.eu/rapid/press-release_IP-18-4581_en.htm ("Google is dominant in the worldwide
 27 market (excluding China) for app stores for the Android mobile operating system. Google's app
 store, the Play Store, accounts for more than 90% of apps downloaded on Android devices.").

28 ¹³⁸ See n.135, *supra*.

1 There, Google's share of the relevant market for Android in-app payment processing is believed, and
 2 therefore alleged, to have reached monopoly status.

3 132. Competitors in the relevant market exist, but their share is exceedingly small given
 4 Google's insistence that Android app developers use its own payment processing system for digital
 5 products sold in apps acquired from Google Play. These competitors, such as PayPal, Stripe, and
 6 Square, charge many magnitudes less than Google,¹³⁹ and they provide better service, including
 7 quicker access to funds.¹⁴⁰ Each is and has been starved of competitive oxygen in the market for
 8 Android in-app payment processing by Google's abusive contracts, policies, and actions. And given
 9 the high sales and monetary value of in-app products,¹⁴¹ certainly the effect on commerce in the
 10 market for these services is substantial.

11 133. For again, due to Google's exclusivist contracts and policies, these competitors offer
 12 no substitute for, Google's payment processing services. Developers, industry, and governments
 13 understand that the Android market alleged herein is a discrete one, which Google monopolizes.

14 134. Based on the reasons alleged herein, including the foregoing, the relevant market is a
 15 single-brand market.

16 135. Google's restraints on competition directly impact the U.S. market for Android in-app
 17 payment processing as alleged herein. Google permits and encourages U.S. app developers to sell
 18 their in-app products (in apps purchased in or via Google Play) to non-U.S. nationals, and U.S.
 19 developers, including the plaintiff, do so. Upon information and belief, these developers' business
 20 relationship and dealings are primarily with Google LLC and Google Payment Corp., which are U.S.

21 ¹³⁹ In fact, PayPal has a microtransactions program for sellers whose transactions average less
 22 than \$10. Its rate is ___, without additional per-transaction charges. Where funds come from a
 23 PayPal account in the U.S., PayPal charges a fee of 5.0% of the transaction plus a fixed fee based on
 currency. See "Micropayment Fees," <https://www.paypal.com/us/webapps/mpp/merchant-fees> (last
 accessed Aug. 17, 2020).

24 ¹⁴⁰ Cf. "Receiving Payout," available at: <https://stripe.com/docs/payouts#payoutschedule>
 25 (referring to two-business-day and seven-calendar-day payout schedule for U.S. accounts, depending
 on assessed risk level, for the payment processor Stripe) (last accessed Sept. 27, 2019).

26 ¹⁴¹ See, e.g., *Consumer Spending in Mobile Apps Grew 17% in 2019 to Exceed \$83 Billion*
 27 *Globally*, SensorTower (Jan. 6, 2020), <https://sensortower.com/blog/app-revenue-and-downloads-2019> ("An estimated \$61.7 billion was spent in mobile games across both stores last year, 12.8
 28 percent more than 2018's total of \$54.7 billion. This was 74 percent of all in-app spending for
 2019[.]") (last accessed Aug. 17, 2020).

entities. Therefore, the Foreign Trade Antitrust Improvement Act does not apply. Alternatively, its exceptions apply, including because the conduct alleged has a direct, substantial, and reasonably foreseeable effect on trade or commerce which is not trade or commerce with foreign nations.

136. Google is a direct seller of Android in-app payment processing services to Android developers for the sale of apps in or via the Google Play store and for add-ons and other products sold in those apps.¹⁴²

137. Plaintiff seeks relief on behalf of themselves and other developers. Insofar as Google Play may be or is a two-sided platform, lower prices would not lead to any discernible negative indirect network effects under the circumstances described herein. For example, unlike on credit-card transaction platforms, lower fees or prices would not mean less money available to pay rebates or rewards to consumers. To the contrary, Google does not share its transaction fees with consumers. Here, Google's restraints do not help to establish or enhance participation *inter se* developers and consumers, nor do they help to prevent erosion in participation. In fact, Google can point to no considerations that countervail the propriety of the monetary and injunctive relief that plaintiff seeks.

VII. CLASS ALLEGATIONS

138. Plaintiff brings this proposed class action pursuant to Fed. R. Civ. P. 23(b)(1), (2), and (3).

139. Plaintiff brings this action on its own behalf and the following nationwide class, for monetary and injunctive relief based on violations of the federal Sherman Act:

All U.S. developers of: (a) any paid Android OS app sold in or via the Google Play store, or (b) any paid in-app product (including subscriptions) sold in the Google Play store or via apps distributed in or via the Google Play store.

Excluded from this proposed class are the defendants; defendants' affiliates and subsidiaries; defendants' current or former employees, officers, directors, agents, and representatives; and the

¹⁴² See, e.g., <https://play.google.com/store> (offering various digital products to consumers for purchase, including apps, at various price points) (last accessed Aug. 15, 2020). The Google Play mobile client is installed on hundreds of millions of Android OS devices, as alleged herein, and similarly offers various products, including apps, for purchase and sale.

1 district judge or magistrate judge to whom this case is assigned, as well as those judges' immediate
2 family members.

3 140. Plaintiff also brings this action on its own behalf and the following nationwide class,
4 for monetary and injunctive relief based on violations of California's Unfair Competition Law:

5 All U.S. developers of: (a) any paid Android OS app sold in or via the Google
6 Play store, or (b) any paid in-app product (including subscriptions) sold in the
Google Play store or via apps distributed in or via the Google Play store.

7 Excluded from this proposed class are the defendants; defendants' affiliates and subsidiaries;
8 defendants' current or former employees, officers, directors, agents, and representatives; and the
9 district judge or magistrate judge to whom this case is assigned, as well as those judges' immediate
10 family members.

11 141. **Numerosity:** The exact number of the members of the proposed classes is unknown
12 and is not available to the plaintiff at this time, but upon information and belief, the classes will
13 consist of many thousands of members such that individual joinder in this case is impracticable.

14 142. **Commonality:** Numerous questions of law and fact are common to the claims of the
15 plaintiff and members of the proposed classes. These include, but are not limited to:

16 a. Whether Google unlawfully has conditioned the contractual right of any
17 manufacturer of any Android OS mobile telephone or tablet to pre-install desired Google
18 applications such as the YouTube or Google Maps apps on the manufacturer's agreement also to
19 install the Google Play client, with the object of acquiring or maintaining monopoly status in the
20 U.S. market for Android OS app stores (and correspondingly high market shares in the markets for
21 Android OS distribution services and in-app payment processing services);

22 b. Whether there is a U.S. antitrust market (or submarket) for Android OS app
23 distribution services, *i.e.*, for distribution services provided to U.S. Android App Developers;

24 c. Whether there is a U.S. market for Android in-app payment processing, *i.e.*, for
25 payment processing provided to U.S. Android App Developers;

26 d. Whether Google has unlawfully monopolized, or attempted to monopolize, the
27 foregoing markets or submarket;

1 e. Whether competition in the U.S. market for Android OS distribution services, or
2 payment processing, has been restrained and harmed by Google's monopolization, or attempted
3 monopolization, of such market(s);

4 f. Whether Google has imposed contracts on developers that restrain trade as alleged
5 herein;

6 g. Whether developers have been harmed, including by way of having paid more for
7 app transaction or distribution fees, or in-app product payment processing fees, than they would have
8 but for Google's unlawful conduct, as a result of Google's unlawful practices;

9 h. Whether plaintiff and members of the proposed classes are entitled to declaratory
10 or injunctive relief to halt Google's unlawful practices, and to their attorney fees, costs, and
11 expenses;

12 i. Whether plaintiff and members of the proposed classes are entitled to any
13 damages or restitution incidental to the declaratory or injunctive relief they seek, and to their attorney
14 fees, costs, and expenses related to any recovery of such monetary relief; and

15 j. Whether plaintiff and members of the proposed classes are otherwise entitled to
16 any damages or restitution, and to their attorney fees, costs, and expenses related to any recovery of
17 such monetary relief.

18 143. **Typicality:** Plaintiff's claims are typical of the claims of the members of the
19 proposed classes. The factual and legal bases of Google's liability are the same and resulted in
20 injury to plaintiff and all of the other members of the proposed classes.

21 144. **Adequate representation:** Plaintiff will represent and protect the interests of the
22 proposed classes both fairly and adequately. They have retained counsel competent and experienced
23 in complex class-action litigation. Plaintiff has no interests that are antagonistic to those of the
24 proposed classes, and its interests do not conflict with the interests of the proposed class members it
25 seeks to represent.

26 145. **Prevention of inconsistent or varying adjudications:** If prosecution of myriad
27 individual actions for the conduct complained of were undertaken, there likely would be inconsistent
28 or varying results. This would have the effect of establishing incompatible standards of conduct for

1 the defendant. Certification of plaintiff's proposed classes would prevent these undesirable
 2 outcomes.

3 **146. Injunctive and declaratory relief:** By way of its conduct described in this
 4 complaint, the defendants have acted on grounds that apply generally to the proposed classes.
 5 Accordingly, final injunctive relief or corresponding declaratory relief is appropriate respecting the
 6 classes as a whole.

7 **147. Predominance and superiority:** This proposed class action is appropriate for
 8 certification. Class proceedings on these facts and this law are superior to all other available
 9 methods for the fair and efficient adjudication of this controversy, given that joinder of all members
 10 is impracticable. Even if members of the proposed classes could sustain individual litigation, that
 11 course would not be preferable to a class action because individual litigation would increase the
 12 delay and expense to the parties due to the complex factual and legal controversies present in this
 13 matter. Here, the class action device will present far fewer management difficulties, and it will
 14 provide the benefit of a single adjudication, economies of scale, and comprehensive supervision by
 15 this Court. Further, uniformity of decisions will be ensured.

16 **VIII. APPLICABILITY OF CALIFORNIA LAW**

17 **148.** There is a California law provision incorporated by reference in the Google Play
 18 Terms of Service.¹⁴³ Accordingly, plaintiff alleges that California law applies to the state law claims
 19 they assert on their own behalf, and on behalf of the proposed nationwide classes.

20 **149.** Furthermore, upon information and belief, the unlawful conduct alleged in this
 21 complaint, including the drafting, dissemination, and consummation of anticompetitive contracts and
 22 policies, as well as the levying and collection of Google's supracOMPETITIVE 30% transaction fee on
 23 Google Play purchases, and the enforcement of minimum-price terms, was effected, implemented,
 24 adopted, and ratified in the state of California, where Google LLC and Google Payment Corp.

25 ¹⁴³ See Google Play Terms of Service, available at: <https://play.google.com/about/play-terms/index.html>, which incorporates the Google Terms of Service, the latter of which is available at: <https://policies.google.com/terms> ("California law will govern all disputes arising out of or relating to these terms, service-specific additional terms, or any related services, regardless of conflict of laws rules. These disputes will be resolved exclusively in the federal or state courts of Santa Clara County, California, USA, and you and Google consent to personal jurisdiction in those courts.").

maintain their U.S. headquarters. Therefore, a substantial part of the anticompetitive conduct took place in California. For these reasons, too, plaintiff alleges that they and the proposed nationwide classes are entitled to monetary and injunctive relief pursuant to California law.

FIRST CAUSE OF ACTION
VIOLATION OF THE SHERMAN ACT - MONOPOLIZATION OF MARKET FOR
ANDROID DISTRIBUTION SERVICES
(15 U.S.C. § 2)

150. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

151. Plaintiff brings this federal law claim on its own behalf and on behalf of each member of the proposed nationwide class described above.

152. For this count, the relevant market is the U.S. market for Android OS app ~~and in-app~~
product distribution services, *i.e.*, for distribution services provided to U.S. Android App Developers,

153. Google possesses monopoly power in the relevant market.

154. For the reasons stated herein, substantial barriers to entry and expansion exist in the relevant markets.

155. Google has the power to exclude competition in the relevant market, and it has willfully used that power, including by way of its unlawful practices in restraint of trade as described herein, in order to achieve, maintain, and expand its monopoly power in that market.

156. Furthermore, in an exercise of its monopoly market power, and in order to willfully obtain, maintain, and enhance that power, Google has tied in-app payment processing via its Google Pay Billing product to Android OS app distribution via Google Play. Google has done so via policy, practice, and contract as alleged herein. In-app payments to U.S. developers run to millions of dollars each year, on millions of transactions. Therefore, the effect on the tied market for in-app payment processing, as on the tying market for distribution services, is substantial. Accordingly, Google's tying conduct is *per se* unlawful. And alternatively, it is unlawful under a rule of reason analysis given the facts and circumstances described herein.

157. Given this tie, Google's immense market power in the tying market for distribution services, and the substantial effect on commerce in the tied market for Android in-app payment processing, is *per se* unlawful.

158. Google's conduct as described herein, including its unlawful practices in restraint of trade, is exclusionary vis-à-vis its rivals in the U.S. market for Android OS app and in-app product distribution services, *i.e.*, for distribution services provided to U.S. Android App Developers.

159. Google has behaved as alleged herein to achieve, maintain, and grow its monopoly in the U.S. market for Android OS app and in-app product distribution services, *i.e.*, for distribution services provided to U.S. Android App Developers, with the effect being that competition is foreclosed and that developer choice is gravely diminished. So is innovation. Additionally, Google has abused its market power by imposing supracompetitive 30% developer transaction fees¹⁴⁴ and minimum price fixing. Further, Google’s actions have depressed output as alleged herein.

160. There is no business necessity or other pro-competitive justification for Google’s conduct. Instead, Google’s actions are designed to destroy competition as alleged herein.

161. Plaintiff and the federal law class have been injured, and will continue to be injured, in their businesses and property as a result of Google's conduct, including by way of overpaying for distribution services.

162. Finally, developers, including the plaintiff, are inclined to sell Android OS applications, in-app purchases, and subscriptions via Google Play, or apps purchased therein, in the future, in part because of their investment in their development for the Android OS ecosystem, which is incompatible with Apple’s iOS ecosystem. Plaintiff and the federal law class are entitled to an injunction to prevent Google from persisting in its unlawful behavior to their detriment, including the harm that its behavior is causing to their businesses.

**SECOND CAUSE OF ACTION
VIOLATION OF THE SHERMAN ACT – ATTEMPTED MONOPOLIZATION OF
MARKET FOR ANDROID DISTRIBUTION SERVICES
(15 U.S.C. § 2)**

163. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

164. Plaintiff brings this claim on its own behalf and on behalf of each member of the proposed nationwide federal law class described above.

¹⁴⁴ Or, alternatively, a still supracompetitive 15% commission on certain subscriptions, for what amounts to payment processing services that could be purchased much cheaper from other provider, if Google permitted developers to use them.

1 165. Google has attempted to monopolize the U.S. market for Android OS app distribution
2 services, *i.e.*, for distribution services provided to U.S. Android App Developers.

3 166. Google's anticompetitive conduct has created a dangerous probability that it will
4 achieve monopoly power in the U.S. market for Android OS app distribution services, *i.e.*, for
5 distribution services provided to U.S. Android App Developers.

6 167. Google has a specific intent to achieve monopoly power in the U.S. market for
7 Android OS app distribution services, *i.e.*, for distribution services provided to U.S. Android App
8 Developers.

9 168. Google has the power to exclude competition in the U.S. market for Android OS app
10 distribution services, *i.e.*, for distribution services provided to U.S. Android App Developers, and it
11 has used that power, including by way of its unlawful practices in restraint of trade as described
12 herein, in an attempt to monopolize that relevant market.

13 169. Google's conduct as described herein, including its unlawful practices in restraint of
14 trade, is exclusionary vis-à-vis its rivals in the U.S. market for Android OS app distribution services,
15 *i.e.*, for distribution services provided to U.S. Android App Developers.

16 170. Google has behaved as alleged herein in a willful attempt to obtain a monopoly in the
17 U.S. market for Android OS app distribution services, *i.e.*, for distribution services provided to U.S.
18 Android App Developers, with the effect being that competition is foreclosed and that consumer
19 choice is gravely diminished. So is innovation. Additionally, Google has abused its market power
20 by insisting on 30% transaction fees¹⁴⁵ and minimum price fixing. Further, Google's actions have
21 depressed output as alleged herein.

22 171. There is no business necessity or other pro-competitive justification for Google's
23 conduct.

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28 ¹⁴⁵ Or, alternatively, a still supracompetitive 15% commission on certain subscriptions, for what amounts to payment processing services that could be purchased much cheaper from other provider, if Google permitted developers to use them.

1 172. Plaintiff and the federal law class have been injured, and will continue to be injured,
2 in their businesses and property as a result of Google's conduct, including by way of overpaying for
3 distribution services.

4 173. Finally, developers, including the plaintiff, are inclined to sell Android OS
5 applications, in-app purchases, and subscriptions via Google Play, or apps purchased therein, in the
6 future, in part because of their investment in their development for the Android OS ecosystem, which
7 is incompatible with Apple's iOS ecosystem. Plaintiff and the federal law class are entitled to an
8 injunction to prevent Google from persisting in its unlawful behavior to their detriment, including the
9 harm that its behavior is causing to their businesses.

10 **THIRD CAUSE OF ACTION**
11 **VIOLATION OF THE SHERMAN ACT - MONOPOLIZATION OF MARKET FOR**
12 **ANDROID IN-APP PAYMENT PROCESSING SERVICES**
13 **(15 U.S.C. § 2)**

14 174. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

15 175. Plaintiff brings this federal law claim on its own behalf and on behalf of each member
16 of the proposed nationwide class described above.

17 176. For this count, the relevant market is the U.S. market for Android in-app payment
18 processing, *i.e.*, for payment processing provided to U.S. Android App Developers.

19 177. Google possesses monopoly power in the relevant market.

20 178. For the reasons stated herein, substantial barriers to entry and expansion exist in the
21 relevant markets.

22 179. Google has the power to exclude competition in the relevant market, and it has
23 willfully used that power, including by way of its unlawful practices in restraint of trade as described
24 herein, in order to achieve, maintain, and expand its monopoly power in that market.

25 180. Google's conduct as described herein, including its unlawful practices in restraint of
26 trade, is exclusionary vis-à-vis its rivals in the relevant market is the U.S. market for Android in-app
27 payment processing, *i.e.*, for payment processing provided to U.S. Android App Developers.

28 181. Google has behaved as alleged herein to achieve, maintain, and grow its monopoly in
the relevant market is the U.S. market for Android in-app payment processing, *i.e.*, for payment

1 processing provided to U.S. Android App Developers., with the effect being that competition is
 2 foreclosed and that developer choice is gravely diminished. So is innovation. Additionally, Google
 3 has abused its market power by imposing supracompetitive 30% developer transaction fees¹⁴⁶ and
 4 minimum price fixing. Further, Google's actions have depressed output as alleged herein.

5 182. There is no business necessity or other pro-competitive justification for Google's
 6 conduct. Instead, Google's actions are designed to destroy competition as alleged herein.

7 183. Plaintiff and the federal law class have been injured, and will continue to be injured,
 8 in their businesses and property as a result of Google's conduct, including by way of overpaying for
 9 payment processing services.

10 184. Finally, developers, including the plaintiff, are inclined to sell Android OS
 11 applications, in-app purchases, and subscriptions via Google Play, or apps purchased therein, in the
 12 future, in part because of their investment in their development for the Android OS ecosystem, which
 13 is incompatible with Apple's iOS ecosystem. Plaintiff and the federal law class are entitled to an
 14 injunction to prevent Google from persisting in its unlawful behavior to their detriment, including the
 15 harm that its behavior is causing to their businesses.

16 **FOURTH CAUSE OF ACTION**
VIOLATION OF THE SHERMAN ACT – ATTEMPTED MONOPOLIZATION OF
MARKET FOR ANDROID IN-APP PAYMENT PROCESSING SERVICES
(15 U.S.C. § 2)

17 185. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

18 186. Plaintiff brings this claim on its own behalf and on behalf of each member of the
 19 proposed nationwide federal law class described above.

20 187. Google has attempted to monopolize the U.S. market for Android in-app payment
 21 processing, *i.e.*, for payment processing provided to U.S. Android App Developers.

22 188. Google's anticompetitive conduct has created a dangerous probability that it will
 23 achieve monopoly power in the U.S. market for Android in-app payment processing, *i.e.*, for
 24 payment processing provided to U.S. Android App Developers.

25 146 Or, alternatively, a still supracompetitive 15% commission on certain subscriptions, for what
 26 amounts to payment processing services that could be purchased much cheaper from other provider,
 27 if Google permitted developers to use them.

1 189. Google has a specific intent to achieve monopoly power in the U.S. market for
 2 Android in-app payment processing, *i.e.*, for payment processing provided to U.S. Android App
 3 Developers.

4 190. Google has the power to exclude competition in the U.S. market for Android in-app
 5 payment processing, *i.e.*, for payment processing provided to U.S. Android App Developers, and it
 6 has used that power, including by way of its unlawful practices in restraint of trade as described
 7 herein, in an attempt to monopolize that relevant market.

8 191. Google's conduct as described herein, including its unlawful practices in restraint of
 9 trade, is exclusionary vis-à-vis its rivals in the U.S. market for Android in-app payment processing,
 10 *i.e.*, for payment processing provided to U.S. Android App Developers.

11 192. Google has behaved as alleged herein in a willful attempt to obtain a monopoly in the
 12 U.S. market for Android in-app payment processing, *i.e.*, for payment processing provided to U.S.
 13 Android App Developers, with the effect being that competition is foreclosed and that consumer
 14 choice is gravely diminished. So is innovation. Additionally, Google has abused its market power
 15 by insisting on 30% transaction fees¹⁴⁷ and minimum price fixing. Further, Google's actions have
 16 depressed output as alleged herein.

17 193. There is no business necessity or other pro-competitive justification for Google's
 18 conduct.

19 194. Plaintiff and the federal law class have been injured, and will continue to be injured,
 20 in their businesses and property as a result of Google's conduct, including by way of overpaying for
 21 payment processing services.

22 195. Finally, developers, including the plaintiff, are inclined to sell Android OS
 23 applications, in-app purchases, and subscriptions via Google Play, or apps purchased therein, in the
 24 future, in part because of their investment in their development for the Android OS ecosystem, which
 25 is incompatible with Apple's iOS ecosystem. Plaintiff and the federal law class are entitled to an

26
 27 ¹⁴⁷ Or, alternatively, a still supracompetitive 15% commission on certain subscriptions, for what
 28 amounts to payment processing services that could be purchased much cheaper from other provider,
 if Google permitted developers to use them.

injunction to prevent Google from persisting in its unlawful behavior to their detriment, including the harm that its behavior is causing to their businesses.

FIFTH CAUSE OF ACTION
**VIOLATION OF THE SHERMAN ACT – RESTRAINT OF TRADE RE: IN-APP
PAYMENT PROCESSING**
(15 U.S.C. § 1)

196. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

197. Google's conduct violates Section 1 of the Sherman Act, which prohibits "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations." 15 U.S.C. § 1.

198. Google requires app developers to enter its standardized DDA, including Developer Program Policies integrated into that Agreement, as a condition of having their apps distributed through Google's monopolized app store, Google Play. The relevant provisions of these agreements unreasonably restrain competition in the U.S. market for Android in-app payment processing, *i.e.*, for payment processing provided to U.S. Android App Developers.

199. Section 3.2 of the DDA requires that Android app developers enter into a separate agreement with Google’s payment processor, Defendant Google Payment, in order to receive payment for apps and content distributed through Google Play. This includes payments related to in-app purchases of digital content. Further, Google’s Developer Program Policies, compliance with which Section 4.1 of the DDA makes obligatory, require that apps distributed through Google Play “must use Google Play In-app Billing [offered by Google Payment] as the method of payment” for such in-app purchases. While Google’s Policies exclude certain types of transactions from this requirement, such as the purchase of “solely physical products” or of “digital content that may be consumed outside of the app itself,” Google expressly applies its anticompetitive mandate to every “game downloaded on Google Play” and to all purchased “game content.”

200. The challenged provisions serve no sufficient legitimate or pro-competitive purpose and unreasonably restrain competition in the U.S. market for Android in-app payment processing, *i.e.*, for payment processing provided to U.S. Android App Developers.

201. Google's conduct affects a substantial volume of interstate commerce.

202. Google's conduct has substantial anticompetitive effects, including increased prices and costs, reduced innovation and quality of service, and lowered output

203. Plaintiff and putative class members have been harmed by Google's anticompetitive conduct in a manner that the antitrust laws were intended to prevent. They have suffered and continue to suffer damages and irreparable injury, including harm to their businesses, and such damages and injury will not abate unless an injunction issues that will stop Google's anticompetitive conduct.

204. Developers, including the plaintiff, are inclined to sell Android OS applications, in-app purchases, and subscriptions via Google Play, or apps purchased therein, in the future, in part because of their investment in their development for the Android OS ecosystem, which is incompatible with Apple’s iOS ecosystem. Plaintiff and the federal law class are entitled to an injunction to prevent Google from persisting in its unlawful behavior to their detriment.

SIXTH CAUSE OF ACTION
VIOLATION OF THE SHERMAN ACT – ALTERNATIVE BASIS FOR TYING AS TO IN-APP PAYMENT-PROCESSING
(15 U.S.C. § 1)

205. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

206. Google's conduct violates Section 1 of the Sherman Act, which prohibits “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations.” 15 U.S.C. § 1.

207. Google has unlawfully tied distribution services for Google Play to its in-app payment processor, Google Play Billing, through its DDAs with app developers and its Developer Program Policies.

208. As demonstrated herein, Google has immense, monopoly power in the tying market—the U.S. market for Android OS app and in-app product distribution services, *i.e.*, for distribution services provided to U.S. Android App Developers. Put another way, with Google Play installed on nearly all Android OS devices and over 90% of downloads on Android OS devices being performed via Google Play, Google has overwhelming market power. Google’s market power is further evidenced by its ability to extract supracompetitive taxes on the sale of apps via Google Play.

1 209. The availability of Google Play for app distribution is conditioned on the app
2 developer accepting a second product, Google's in-app payment processing . Google's foreclosure of
3 alternative app distribution channels thus forces developers, including the plaintiff and putative class
4 members, to use Google's in-app payment processing services. Indeed, Google has expressly its use
5 a condition of reaching Android users through its dominant Google Play store.

6 210. The tying product, Android app distribution, is distinct from the tied product, Android
7 in-app payment processing, because app developers have alternative in-app payment processing
8 options and would prefer to choose among them independently of how an Android app is distributed.
9 Google's unlawful tying arrangement thus ties two separate products that are in separate markets.
10 Google's contract and written policies underscore their separate nature.¹⁴⁸

11 211. Google's conduct forecloses competition in the U.S. market for Android in-app
12 payment processing, *i.e.*, for payment processing provided to U.S. Android App Developers. Given
13 the volume of transactions and the money at issue, Google's conduct thus affects a substantial
14 volume of commerce in that market.

15 212. Google has thus engaged in a *per se* illegal tying arrangement. *See ¶¶ 155-157, supra.*

16 213. In the alternative only, even if Google's tying conduct does not constitute a *per se*
17 violation of the law, a rule-of-reason analysis of Google's tying arrangement also would demonstrate
18 that it violates the law.

19 214. As an app developer that consumes in-app payment processing services for its in-app
20 subscription product, plaintiff has been harmed by Google's anticompetitive conduct. Plaintiffs and
21 members of the putative class have suffered and continue to suffer damages and irreparable injury,
22 including ongoing harm to their businesses, and such damages and injury will not abate until the
23 Court issues an injunction ending Google's anticompetitive conduct issues

24 215. Developers, including the plaintiff, are inclined to sell Android OS applications, in-
25 app purchases, and subscriptions via Google Play, or apps purchased therein, in the future, in part
26 because of their investment in their development for the Android OS ecosystem, which is

27
28 148 *See supra ¶¶ 155-57.*

incompatible with Apple’s iOS ecosystem. Plaintiff and the federal law class are entitled to an injunction to prevent Google from persisting in its unlawful behavior to their detriment.

**SEVENTH CAUSE OF ACTION
VIOLATION OF THE UNFAIR COMPETITION ACT
(CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.)**

216. Plaintiff repeats and re-alleges every allegation above as if set forth herein in full.

217. Plaintiff brings this claim on its own behalf and on behalf of each member of the proposed nationwide California law class described above. Alternatively, if the Court does not apply California law on a nationwide basis, Plaintiff brings this claim on their own behalf and on behalf of each member of a California resident class.

218. California’s Unfair Competition Law (UCL) defines “unfair competition” to include any “unlawful, unfair, or fraudulent” business act or practice. CAL. BUS. & PROF. CODE §§ 17200 *et seq.* As these are stated in the disjunctive, the UCL sets up three prongs—the unlawful, unfair, and fraudulent prongs—the violation of any of which constitutes a violation of the UCL

219. Google has engaged in, and continues to engage in, acts of unfair competition as defined in California's UCL. More specifically, Google, based upon the conduct alleged herein, has violated the unlawful and unfair prongs of the UCL.

Unlawful prong

220. Google's acts of unfair competition include its violations of the Sherman Act as alleged herein. Therefore, Google has violated the unlawful prong of the UCL.

221. Google’s conduct has harmed developers, and developers have overpaid for distribution and in-app payment processing fees, due to Google’s unlawful behavior as alleged herein. Google’s willfully obtained market power has allowed it to impose its supracompetitive fees on developers. But for Google’s exclusionary and anticompetitive behavior, developer charges would have been much lower than what they were.

Unfair prong

222. Google's acts of unfair competition include its violations of the Sherman Act and the policies underlying it, as alleged herein. Additionally, Google has behaved unfairly and in violation of public policy as alleged herein. Therefore, Google has violated the unfair prong of the UCL.

223. Google's conduct has harmed developers, and developers have overpaid for distribution and in-app payment processing fees, due to Google's unfair behavior as alleged herein. Google's willfully obtained market power has allowed it to impose its supracompetitive fees on developers. But for Google's exclusionary and anticompetitive behavior, developer payments would have been much lower than what they were.

224. Finally, developers, including the plaintiff, are inclined to sell Android OS applications, in-app purchases, and subscriptions via Google Play, or apps purchased therein, in the future, in part because of their investment in their development for the Android OS ecosystem, which is incompatible with Apple’s iOS ecosystem. Plaintiff and the state law class are entitled to an injunction to prevent Google from persisting in its unlawful behavior to their detriment.

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests the following relief:

A. That the Court certify this case as a class action; that it certify the proposed federal law class on a nationwide basis; the proposed California law class on a nationwide basis; or, alternatively with respect to plaintiff's California law claim, and at a minimum, a California resident class based on California law; and that it appoint them as class representatives and their counsel as class counsel;

B. That the Court award it and the proposed classes all appropriate relief, to include, but not be limited to, injunctive relief requiring that Google cease the abusive, unlawful, and anticompetitive practices described herein (including pursuant to federal antitrust law, *see, e.g.*, 15 U.S.C. § 26, and state law, *see, e.g.*, Cal. Bus. & Prof. Code § 17203, as requested herein); declaratory relief, adjudging such practices unlawful; as well as monetary relief, whether by way of restitution (*see, e.g.*, Cal. Bus. & Prof. Code § 17203) or damages, including treble damages (*see, e.g.*, 15 U.S.C. § 15(a)), or other multiple or punitive damages, or restitution, where mandated by law (including federal antitrust law, *see, e.g.*, 15 U.S.C. § 15(a)) or equity or as otherwise available; together with recovery of their costs of suit, to include their reasonable attorneys' fees, costs, and expenses (including pursuant to federal antitrust law, *see, e.g.*, 15 U.S.C. § 15(a) and/or 15 U.S.C. §

1 26; *see also* Cal. Code Civ. Pro. § 1021.5)), together with pre- and post-judgment interest to the
2 maximum levels permitted by law or equity;

3 C. That the Court grant such additional orders or judgments as may be necessary to
4 prevent the unlawful practices complained of herein; and

5 D. That the Court award it and proposed classes such other, favorable relief as may be
6 available and appropriate under federal or state law, or at equity.

7 **JURY TRIAL DEMANDED**

8 Plaintiff demands a trial by jury on all issues so triable.

1 DATED: August 17, 2020

Respectfully submitted,

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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 OAKLAND DIVISION

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Case No. 4:19-cv-03074-YGR

GOOGLE LLC'S RESPONSE TO SUA SPONTE JUDICIAL REFERRAL FOR PURPOSES OF DETERMINING RELATIONSHIP OF CASES

Plaintiff,

v.

Defendants.

Defendants.

Pursuant to Civil L.R. 3-12(c) and (e), Google LLC (“Google”) responds to the Sua Sponte Judicial Referral for Purposes of Determining Relationship of Cases ordered by Judge Chen in *Pure Sweat Basketball, Inc. v. Google LLC, et al.*, No. 20-cv-05792-EMC (N.D. Cal) (“PSB-Google”), ECF 16. Judge Chen has referred *PSB-Google* to Judge Donato and Judge Gonzalez Rogers to determine whether it is related to: *Epic Games, Inc. v. Google LLC et al.*, No. C-20-5671-JD (“Epic-Google”); *Cameron et al v. Apple Inc.*, No. C-19-3074-YGR (“Cameron-Apple”); or *Epic Games, Inc. v. Apple Inc.*, No. C-20-5640-YGR (“Epic-Apple”).

For completeness, Google advises the Court that two other actions should also be considered for “relation” under Local Rule 3-12: *Feitelson v. Google Inc.*, No. 14-cv-02007 (“Feitelson-Google”)¹, which “was pending” before Judge Freeman; and *Carr v. Google LLC*, No. 20-CV-05761 (“Carr-Google”), which “is pending” before Judge Freeman.

As a threshold matter, Google believes the three Android-related cases filed recently—*Epic-Google* (Donato, J.), *Carr-Google* (Freeman, J.) and *PSB-Google* (Chen, J.)—all “relate” to each other under Local Rule 3-12(a). Solely for convenience and purposes of this Response, Google refers to these actions as “the Android/Google Cases.” Google also notes that under Local Rule 3-12, these three cases may be related to the earlier-filed Android case, *Feitelson-Google* (Freeman, J.), an action that “was pending in this District.” Civ. L.R. 3-12(b).

Google respectfully opposes relation of the Android/Google Cases to *Cameron-Apple* or *Epic-Apple* (together, for purposes of this Response, the “iOS/Apple Cases”). Although Android and iOS compete to attract app developers and end users, Google (through Android) and Apple (through iOS) use different business models, agreements, and policies to support competing ecosystems. The Android/Google Cases and iOS/Apple Cases thus do not concern “substantially the same parties, property, transaction or event.” Civ. L.R. 3-12(a)(1). Moreover, the cases sit in markedly different procedural postures—Google has not been served with the Complaints in *Epic-Google* and *Carr-Google*, and only two of five Google defendants have been served in *PSB-Google* (on August 21, 2020), whereas Apple has been engaged in continuous iOS-related

¹ The *PSB-Google* complaint cites to the *Feitelson-Google* complaint when referencing relevant Mobile Application Distribution Agreements (“MADAs”). *PSB-Google* Complaint, ¶ 69 n.75.

1 litigation since 2011. It is therefore unlikely that conducting the Android/Google Cases and
 2 iOS/Apple Cases before different Judges will lead to “unduly burdensome duplication of labor
 3 and expense or conflicting results.” Civ. L.R. 3-12(a)(2).

4 DISCUSSION

5 An action is related to another when (1) the actions concern substantially the same parties,
 6 property, transaction, or event; and (2) it appears likely that there will be an unduly burdensome
 7 duplication of labor and expense or conflicting results if the cases are conducted before different
 8 judges. Civ. L.R. 3-12(a). The rule applies to any potentially related action “which is or was
 9 pending in this District.” Civ. L.R. 3-12(b) (emphasis added).

10 **I. The Android/Google Cases Should Not Be Related To the iOS/Apple Cases**

11 The Android/Google Cases and the iOS/Apple Cases lack the requisite “substantial” parity
 12 in parties, transactions, and operative facts. This Court has rejected relation of cases even where
 13 parties and claims were far more similar than they are here. *See Tecson v. Lyft*, No. 18-cv-06782,
 14 2019 WL 1903263, at *3 (N.D. Cal. Apr. 29, 2019) (Gonzalez Rogers, J.) (finding that TCPA
 15 cases against the *same* defendant did “not suffice to meet the substantial similarity threshold”
 16 because the cases involved “different facts and claims so the judge in each case would be focused
 17 on resolving separate issues of law and fact for different parties”).

18 ***Different Parties, Property, Transactions, and Events.*** The defendants in the
 19 Android/Google Cases are different from the defendants in the iOS/Apple Cases. This is
 20 significant; it means there is virtually no overlap in the “property, transactions, or event[s]” at
 21 issue. Civ. L.R. 3-12(a). This Court has recognized in the iOS/Apple Cases that having the same
 22 defendant in those cases resulted in “each case stem[ming] from the use of the exact same
 23 technology and the economics regarding the same technology.” *Pepper v. Apple*, No. 11-cv-
 24 06714-YGR, 2019 WL 4783951, at *1 (N.D. Cal. Aug. 22, 2019) (Gonazalez Rogers, J.) (finding
 25 “significant economies” in terms of case management and resolution of motions tied to an
 26 understanding of the technology, platform markets, and the transactions at issue). In contrast,
 27 Android and iOS do not use the “exact same technologies” and the business models of these two
 28

1 ecosystems, though in competition with each other, are materially different.

2 Android and iOS compete to attract app developers and end users, but the conduct
 3 underlying their competition—and at issue in these two separate sets of lawsuits—is
 4 distinct. While Apple’s iOS allows the distribution of apps only through Apple’s proprietary app
 5 store, Android devices, in contrast: (1) can have multiple app stores simultaneously pre-installed
 6 or downloaded and (2) allow for end users to sideload apps via the Internet. That means Android
 7 app developers can distribute apps through multiple Android app stores, work directly with
 8 OEMs or carriers to preload apps, and distribute apps to users directly from their own
 9 websites. As a result, Apple and Google each have their own separate and unique negotiations
 10 and contracts with app developers and original equipment manufacturers (OEMs). These
 11 fundamental differences in the way Apple and Google support app distribution create key
 12 distinctions in the claims and defenses in the iOS/Apple Cases and Android/Google Cases.²

13 Although there is some overlap with certain named plaintiffs—e.g., Epic has filed suit in
 14 both *Epic-Apple* and *Epic-Google*—and the app developer classes—i.e., developers can create
 15 both iOS and Android versions of their app—this overlap is insignificant from a “relation”
 16 perspective. The operative facts relating to the business strategies and app distribution policies
 17 that underlie the claims in the iOS/Apple Cases are different from those in the Android/Google
 18 Cases. *See Tecson*, 2019 WL 1903263, at *3 (“Even if there was some overlap between classes,
 19 the operative facts for the putative classes would still make them substantially different.”).

20 ***Little Duplication of Labor and Expense or Risk of Conflicting Results.*** The
 21 Android/Google Cases and iOS/Apple Cases are in very different procedural postures, making it
 22 unlikely there will be meaningful efficiencies created through relation. The iOS/Apple Cases are
 23 related to a consumer class case, *In re Apple iPhone Antitrust Litigation*, No. 11-cv-06714-YGR,
 24 that was filed in 2011 and is set for class certification proceedings in 2021 and trial in
 25 2022. *Cameron-Apple* is proceeding on the same schedule. The *Epic/Apple* matter appears to be
 26 proceeding on an expedited schedule. In contrast, no Google entity has been served in *Epic-*

28 ² This Response does not suggest that claims against Apple in the iOS/Apple Cases have merit.

1 Google or *Carr-Google* and only two of five Google defendants were served in *PSB-Google* (on
 2 August 21, 2020). Once served, and only after the initial scheduling is worked out, Google will
 3 challenge the complaints, in large part based on circumstances unique to Android, just as it did in
 4 *Feitelson v. Google, Inc.*, 80 F. Supp. 3d 1019 (N.D. Cal. 2015). These differences in procedural
 5 posture make it unlikely that there will be an unduly burdensome duplication of labor and
 6 expense, and given the different defendants and operative facts, there is little risk of conflicting
 7 results. *Cf. Pepper*, 2019 WL 4783951, at *2 (relating cases when “[a]ll three cases are currently
 8 in a similar procedural posture and have yet to begin substantial discovery and so efficiency gains
 9 will be achieved in discovery” and “the fact that both sets of plaintiffs seek injunctive relief
 10 [against Apple] presents a sufficient risk of inconsistent results to warrant relation”).

11 II. The Android/Google Cases All Relate To Each Other

12 While the three Android/Google Cases are related to each other, Google believes that
 13 alongside Judge Chen’s referral to Judge Donato, under Local Rule 3-12, the cases also need to
 14 be referred to Judge Freeman as they “may be ... related” to *Feitelson-Google*.³ Civ. L.R. 3-
 15 12(b). These cases each allege claims against Google defendants based on Google’s contracts
 16 with app developers and its policies within the Android ecosystem. The chart below summarizes
 17 the *Feitelson-Google* case and each of the three Android/Google Cases in order of their filing.

18 Case, No. (Judge)	19 Plaintiff / Type	20 Defendants	21 Property, Transaction or Event
22 <i>Feitelson v. Google Inc.</i> , 23 No. 5:14-cv-02007 (Freeman, J.)	24 Gary Feitelson and Daniel McKee / Putative consumer class	25 Google, Inc.* *Converted to Google LLC in 2017	26 Android OS Google Search Google’s MADA Google Play Store
27 <i>Epic Games, Inc. v.</i> 28 <i>Google LLC et al.</i> , No. 3:20-cv-05671	29 Epic Games / Individual app developer	30 Google LLC Google Payment Corp. Google Ireland Ltd.	31 Android OS Google’s MADA Google Play Store

3 Each of the plaintiffs in the recently-filed Android/Google Cases—Epic, Mary Carr, and Pure
 Sweat Basketball—agreed to litigate disputes with Google “exclusively” in Santa Clara County,
 i.e., in the San Jose Division for federal court cases. See Google DDA, §16.8, available at
<https://play.google.com/about/developer-distribution-agreement.html>; Google Terms of Service,
 Section “Settling disputes, governing law, and courts”, available at
<https://policies.google.com/terms?hl=en-US>. Judge Freeman is the only judge currently assigned
 an Android/Google Case (*Carr-Google*) who presides in the San Jose Division.

1	(Donato, J.)	Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	Google's Developer Distribution Agreements ("DDA")
2	<i>Carr v. Google LLC et al.</i> , No. 5:20-cv-05761 (Freeman, J.)	Mary Carr / Putative consumer class	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.
3	<i>Pure Sweat Basketball, Inc. v. Google LLC et al.</i> , No. 3:20-cv-05792 (Chen, J.)	Pure Sweat Basketball / Putative app developer class	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.

The three recently-filed cases each concern the same open mobile OS (Android) and challenge the same Google Play policies, so there is a potential risk of inefficiencies and conflicting results if those cases are heard before different Judges. The earlier filed case, *Feitelson-Google*, was pending in this district and dismissed by Judge Freeman in 2015. *See Feitelson v. Google, Inc.*, 80 F. Supp. 3d 1019 (N.D. Cal. 2015) (granting motion to dismiss). The same counsel who represented the *Feitelson* plaintiffs also represent the plaintiff in *PSB-Google*, and both complaints allege the same theory of anticompetitive harm: Google's use of MADAs to purportedly foreclose competition in the relevant markets alleged in each complaint. Both complaints allege *inter alia* that under Google's MADA, OEMs can only preload "must-have" Google apps if the OEM agrees to preload a bundle of Google apps (including Google Play), which allegedly forecloses competitive apps from being preloaded. *See, e.g., Feitelson-Google*, Dkt. No. 31, FAC ¶ 7; *PSB-Google*, Dkt. No. 1, Compl. ¶ 7. The *Epic-Google* and *Carr-Google* cases allege substantially similar legal theories. *See, e.g., Epic-Google*, Dkt. No. 1, Compl., ¶¶ 56-57; *Carr-Google*, Dkt. No. 1, ¶¶ 33-34.

* * *

Google therefore respectfully requests that the Court decline to relate *PSB-Google* to *Cameron-Apple* or *Epic-Apple*.⁴

⁴ Google has filed this initial Response in the lowest-numbered case identified on Judge Chen's Sua Sponte Referral Order. Google also intends to file in due course: (1) a response to Judge Chen's Sua Sponte Referral on the docket for *Epic-Google* (before Judge Donato), and (2) an administrative motion as required by Civ. L.R. 3-12(b) to consider whether the Android/Google cases "may be" related to *Feitelson-Google*, which "was pending" before Judge Freeman.

1 Dated: September 3, 2020

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

15 EPIC GAMES, INC., a Maryland Corporation,

Case No. 3:20-cv-05671-JD

16 Plaintiff,
17 v.
18 GOOGLE LLC; GOOGLE IRELAND
19 LIMITED; GOOGLE COMMERCE
20 LIMITED; GOOGLE ASIA PACIFIC
PTE. LTD.; and GOOGLE PAYMENT
CORP.,

GOOGLE LLC'S RESPONSE TO SUA SPONTE JUDICIAL REFERRAL FOR PURPOSES OF DETERMINING RELATIONSHIP OF CASES

Defendants.

Case No. 3:20-cv-05671-JD

Pursuant to Civil L.R. 3-12(c) and (e), Google LLC (“Google”) responds to the Sua Sponte Judicial Referral for Purposes of Determining Relationship of Cases ordered by Judge Chen in *Pure Sweat Basketball, Inc. v. Google LLC, et al.*, No. 20-cv-05792-EMC (N.D. Cal.) (“PSB-Google”), ECF 16. Judge Chen has referred *PSB-Google* to Judge Donato and Judge Gonzalez Rogers to determine whether it is related to: *Epic Games, Inc. v. Google LLC et al.*, No. C-20-5671-JD (“Epic-Google”); *Cameron et al v. Apple Inc.*, No. C-19-3074-YGR (“Cameron-Apple”); or *Epic Games, Inc. v. Apple Inc.*, No. C-20-5640-YGR (“Epic-Apple”). Google and Google Payment Corp. were served in *Epic-Google* on September 4, 2020.¹

For completeness, Google advises the Court that two other actions should also be considered for “relation” under Local Rule 3-12: *Feitelson v. Google Inc.*, No. 14-cv-02007 (“Feitelson-Google”)², which “was pending” before Judge Freeman; and *Carr v. Google LLC*, No. 20-CV-05761 (“Carr-Google”), which “is pending” before Judge Freeman.

As a threshold matter, Google believes the three Android-related cases filed recently—*Epic-Google* (Donato, J.), *Carr-Google* (Freeman, J.) and *PSB-Google* (Chen, J.)—all “relate” to each other under Local Rule 3-12(a). Solely for convenience and purposes of this Response, Google refers to these actions as “the Android/Google Cases.” Google also notes that under Local Rule 3-12, these three cases may be related to the earlier-filed Android case, *Feitelson-Google* (Freeman, J.), an action that “was pending in this District.” Civ. L.R. 3-12(b). As required by L.R. 3-12(b), Google will be filing an administrative motion before Judge Freeman to consider whether the Android/Google Cases should be related to *Feitelson-Google*.

Google does not believe the Android/Google Cases are related to the cases filed against Apple that are currently before Judge Gonzalez Rogers. Google responded to Judge Chen’s sua sponte order in *Cameron et al v. Apple Inc.*, Case No. C-19-3074-YGR (“Cameron-Apple”), which is the lowest numbered case identified in the Referral Order on September 3, 2020. That response is attached as **Exhibit A**.

¹ The other defendants named in *Epic-Google*—Google Ireland Limited, Google Commerce Limited, and Google Asia Pacific Pte. Limited—have not yet been served.

² The PSB-Google complaint cites to the *Feitelson-Google* complaint when referencing relevant Mobile Application Distribution Agreements (“MADAs”). *PSB-Google Complaint*, ¶ 69 n.75.

DISCUSSION

An action is related to another when (1) the actions concern substantially the same parties, property, transaction, or event; and (2) it appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different judges. Civ. L.R. 3-12(a). The rule applies to any potentially related action “which *is* or *was* pending in this District.” Civ. L.R. 3-12(b) (emphasis added).

The three Android/Google Cases are related to each other. The three recently-filed cases each concern the same open mobile OS (Android) and challenge the same Google Play policies, so there is a potential risk of inefficiencies and conflicting results if those cases are heard before different Judges.

Google also believes that alongside Judge Chen’s referral to this Court, under Local Rule 3-12, the cases also need to be referred to Judge Freeman as they “may be ... related” to *Feitelson-Google*.³ Civ. L.R. 3-12(b). These cases each allege claims against Google defendants based on Google’s contracts with app developers and its policies within the Android ecosystem. The chart below summarizes the *Feitelson-Google* case and each of the three Android/Google Cases in order of their filing.

Case, No. (Judge)	Plaintiff / Type	Defendants	Property, Transaction or Event
<i>Feitelson v. Google Inc.</i> , No. 5:14-cv-02007 (Freeman, J.)	Gary Feitelson and Daniel McKee / Putative consumer class	Google Inc.* *Converted to Google LLC in 2017	Android OS Google Search Google’s MADA Google Play Store

³ Each of the plaintiffs in the recently-filed Android/Google Cases—Epic, Mary Carr, and Pure Sweat Basketball—agreed to litigate disputes with Google “exclusively” in Santa Clara County, i.e., in the San Jose Division for federal court cases. See Google DDA, §16.8, available at <https://play.google.com/about/developer-distribution-agreement.html>; Google Terms of Service, Section “Settling disputes, governing law, and courts”, available at <https://policies.google.com/terms?hl=en-US>. Judge Freeman is the only judge currently assigned an Android/Google Case (*Carr-Google*) who presides in the San Jose Division.

1	<i>Epic Games, Inc. v.</i> <i>Google LLC et al.</i> , No. 3:20-cv-05671 (Donato, J.)	Epic Games / Individual app developer	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	Android OS Google's MADA Google Play Store Google's Developer Distribution Agreements ("DDA")
2	<i>Carr v. Google LLC et</i> <i>al.</i> , No. 5:20-cv-05761 (Freeman, J.)	Mary Carr / Putative consumer class	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	Android OS Google's MADA Google Play Store Google's DDA
3	<i>Pure Sweat Basketball,</i> <i>Inc. v. Google LLC et al.</i> , No. 3:20-cv-05792 (Chen, J.)	Pure Sweat Basketball / Putative app developer class	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	Android OS Google's MADA Google Play Store Google's DDA

11 The earliest filed case, *Feitelson-Google*, was pending in this district and dismissed by
 12 Judge Freeman in 2015. *See Feitelson v. Google Inc.*, 80 F. Supp. 3d 1019 (N.D. Cal. 2015)
 13 (granting motion to dismiss). The same counsel who represented the *Feitelson* plaintiffs also
 14 represent the plaintiff in *PSB-Google*, and both complaints allege the same theory of
 15 anticompetitive harm: Google's use of MADAs to purportedly foreclose competition in the
 16 relevant markets alleged in each complaint. Both complaints allege *inter alia* that under Google's
 17 MADA, OEMs can only preload "must-have" Google apps if the OEM agrees to preload a bundle
 18 of Google apps (including Google Play), which allegedly forecloses competitive apps from being
 19 preloaded. *See, e.g., Feitelson-Google*, Dkt. No. 31, FAC ¶ 7; *PSB-Google*, Dkt. No. 1, Compl.
 20 ¶ 7. The *Epic-Google* and *Carr-Google* cases allege substantially similar legal theories. *See,*
 21 *e.g., Epic-Google*, Dkt. No. 1, Compl., ¶¶ 56-57; *Carr-Google*, Dkt. No. 1, ¶¶ 33-34.

22 ***

23 Google defers to the Court's judgment as to whether, at this time, it should relate *PSB-*
 24 *Google* to *Epic-Google* in response to Judge Chen's Sua Sponte Referral. Google nevertheless
 25 wishes to alert the Court of an administrative motion that Google plans to file in *Feitelson-Google*
 26 as required by Local Rule 3-12(b).

1 Dated: September 4, 2020

By /s/ Brian C. Rocca

2 Brian C. Rocca

3 MORGAN, LEWIS & BOCKIUS LLP

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EXHIBIT A

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

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DONALD R. CAMERON, et al.,
Plaintiff,
v.
APPLE INC.,
Defendants.

Case No. 4:19-cv-03074-YGR

**GOOGLE LLC'S RESPONSE TO SUA
SPONTE JUDICIAL REFERRAL FOR
PURPOSES OF DETERMINING
RELATIONSHIP OF CASES**

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Case No 4:19-cv-03074-YGR

GOOGLE LLC'S RESPONSE TO SUA SPONTE JUDICIAL REFERRAL
FOR PURPOSES OF DETERMINING RELATIONSHIP OF CASES

Pursuant to Civil L.R. 3-12(c) and (e), Google LLC (“Google”) responds to the Sua Sponte Judicial Referral for Purposes of Determining Relationship of Cases ordered by Judge Chen in *Pure Sweat Basketball, Inc. v. Google LLC, et al.*, No. 20-cv-05792-EMC (N.D. Cal) (“PSB-Google”), ECF 16. Judge Chen has referred PSB-Google to Judge Donato and Judge Gonzalez Rogers to determine whether it is related to: *Epic Games, Inc. v. Google LLC et al.*, No. C-20-5671-JD (“Epic-Google”); *Cameron et al v. Apple Inc.*, No. C-19-3074-YGR (“Cameron-Apple”); or *Epic Games, Inc. v. Apple Inc.*, No. C-20-5640-YGR (“Epic-Apple”).

For completeness, Google advises the Court that two other actions should also be considered for “relation” under Local Rule 3-12: *Feitelson v. Google Inc.*, No. 14-cv-02007 (“Feitelson-Google”)¹, which “was pending” before Judge Freeman; and *Carr v. Google LLC*, No. 20-CV-05761 (“Carr-Google”), which “is pending” before Judge Freeman.

As a threshold matter, Google believes the three Android-related cases filed recently—*Epic-Google* (Donato, J.), *Carr-Google* (Freeman, J.) and *PSB-Google* (Chen, J.)—all “relate” to each other under Local Rule 3-12(a). Solely for convenience and purposes of this Response, Google refers to these actions as “the Android/Google Cases.” Google also notes that under Local Rule 3-12, these three cases may be related to the earlier-filed Android case, *Feitelson-Google* (Freeman, J.), an action that “was pending in this District.” Civ. L.R. 3-12(b).

Google respectfully opposes relation of the Android/Google Cases to *Cameron-Apple* or *Epic-Apple* (together, for purposes of this Response, the “iOS/Apple Cases”). Although Android and iOS compete to attract app developers and end users, Google (through Android) and Apple (through iOS) use different business models, agreements, and policies to support competing ecosystems. The Android/Google Cases and iOS/Apple Cases thus do not concern “substantially the same parties, property, transaction or event.” Civ. L.R. 3-12(a)(1). Moreover, the cases sit in markedly different procedural postures—Google has not been served with the Complaints in *Epic-Google* and *Carr-Google*, and only two of five Google defendants have been served in *PSB-Google* (on August 21, 2020), whereas Apple has been engaged in continuous iOS-related

¹ The *PSB-Google* complaint cites to the *Feitelson-Google* complaint when referencing relevant Mobile Application Distribution Agreements (“MADAs”). *PSB-Google* Complaint, ¶ 69 n.75.

1 litigation since 2011. It is therefore unlikely that conducting the Android/Google Cases and
 2 iOS/Apple Cases before different Judges will lead to “unduly burdensome duplication of labor
 3 and expense or conflicting results.” Civ. L.R. 3-12(a)(2).

4 DISCUSSION

5 An action is related to another when (1) the actions concern substantially the same parties,
 6 property, transaction, or event; and (2) it appears likely that there will be an unduly burdensome
 7 duplication of labor and expense or conflicting results if the cases are conducted before different
 8 judges. Civ. L.R. 3-12(a). The rule applies to any potentially related action “which is or was
 9 pending in this District.” Civ. L.R. 3-12(b) (emphasis added).

10 **I. The Android/Google Cases Should Not Be Related To the iOS/Apple Cases**

11 The Android/Google Cases and the iOS/Apple Cases lack the requisite “substantial” parity
 12 in parties, transactions, and operative facts. This Court has rejected relation of cases even where
 13 parties and claims were far more similar than they are here. *See Tecson v. Lyft*, No. 18-cv-06782,
 14 2019 WL 1903263, at *3 (N.D. Cal. Apr. 29, 2019) (Gonzalez Rogers, J.) (finding that TCPA
 15 cases against the *same* defendant did “not suffice to meet the substantial similarity threshold”
 16 because the cases involved “different facts and claims so the judge in each case would be focused
 17 on resolving separate issues of law and fact for different parties”).

18 ***Different Parties, Property, Transactions, and Events.*** The defendants in the
 19 Android/Google Cases are different from the defendants in the iOS/Apple Cases. This is
 20 significant; it means there is virtually no overlap in the “property, transactions, or event[s]” at
 21 issue. Civ. L.R. 3-12(a). This Court has recognized in the iOS/Apple Cases that having the same
 22 defendant in those cases resulted in “each case stem[ming] from the use of the exact same
 23 technology and the economics regarding the same technology.” *Pepper v. Apple*, No. 11-cv-
 24 06714-YGR, 2019 WL 4783951, at *1 (N.D. Cal. Aug. 22, 2019) (Gonazalez Rogers, J.) (finding
 25 “significant economies” in terms of case management and resolution of motions tied to an
 26 understanding of the technology, platform markets, and the transactions at issue). In contrast,
 27 Android and iOS do not use the “exact same technologies” and the business models of these two
 28

1 ecosystems, though in competition with each other, are materially different.

2 Android and iOS compete to attract app developers and end users, but the conduct
 3 underlying their competition—and at issue in these two separate sets of lawsuits—is
 4 distinct. While Apple’s iOS allows the distribution of apps only through Apple’s proprietary app
 5 store, Android devices, in contrast: (1) can have multiple app stores simultaneously pre-installed
 6 or downloaded and (2) allow for end users to sideload apps via the Internet. That means Android
 7 app developers can distribute apps through multiple Android app stores, work directly with
 8 OEMs or carriers to preload apps, and distribute apps to users directly from their own
 9 websites. As a result, Apple and Google each have their own separate and unique negotiations
 10 and contracts with app developers and original equipment manufacturers (OEMs). These
 11 fundamental differences in the way Apple and Google support app distribution create key
 12 distinctions in the claims and defenses in the iOS/Apple Cases and Android/Google Cases.²

13 Although there is some overlap with certain named plaintiffs—e.g., Epic has filed suit in
 14 both *Epic-Apple* and *Epic-Google*—and the app developer classes—i.e., developers can create
 15 both iOS and Android versions of their app—this overlap is insignificant from a “relation”
 16 perspective. The operative facts relating to the business strategies and app distribution policies
 17 that underlie the claims in the iOS/Apple Cases are different from those in the Android/Google
 18 Cases. *See Tecson*, 2019 WL 1903263, at *3 (“Even if there was some overlap between classes,
 19 the operative facts for the putative classes would still make them substantially different.”).

20 ***Little Duplication of Labor and Expense or Risk of Conflicting Results.*** The
 21 Android/Google Cases and iOS/Apple Cases are in very different procedural postures, making it
 22 unlikely there will be meaningful efficiencies created through relation. The iOS/Apple Cases are
 23 related to a consumer class case, *In re Apple iPhone Antitrust Litigation*, No. 11-cv-06714-YGR,
 24 that was filed in 2011 and is set for class certification proceedings in 2021 and trial in
 25 2022. *Cameron-Apple* is proceeding on the same schedule. The *Epic/Apple* matter appears to be
 26 proceeding on an expedited schedule. In contrast, no Google entity has been served in *Epic-*

28 ² This Response does not suggest that claims against Apple in the iOS/Apple Cases have merit.

1 Google or *Carr-Google* and only two of five Google defendants were served in *PSB-Google* (on
 2 August 21, 2020). Once served, and only after the initial scheduling is worked out, Google will
 3 challenge the complaints, in large part based on circumstances unique to Android, just as it did in
 4 *Feitelson v. Google, Inc.*, 80 F. Supp. 3d 1019 (N.D. Cal. 2015). These differences in procedural
 5 posture make it unlikely that there will be an unduly burdensome duplication of labor and
 6 expense, and given the different defendants and operative facts, there is little risk of conflicting
 7 results. *Cf. Pepper*, 2019 WL 4783951, at *2 (relating cases when “[a]ll three cases are currently
 8 in a similar procedural posture and have yet to begin substantial discovery and so efficiency gains
 9 will be achieved in discovery” and “the fact that both sets of plaintiffs seek injunctive relief
 10 [against Apple] presents a sufficient risk of inconsistent results to warrant relation”).

11 II. The Android/Google Cases All Relate To Each Other

12 While the three Android/Google Cases are related to each other, Google believes that
 13 alongside Judge Chen’s referral to Judge Donato, under Local Rule 3-12, the cases also need to
 14 be referred to Judge Freeman as they “may be ... related” to *Feitelson-Google*.³ Civ. L.R. 3-
 15 12(b). These cases each allege claims against Google defendants based on Google’s contracts
 16 with app developers and its policies within the Android ecosystem. The chart below summarizes
 17 the *Feitelson-Google* case and each of the three Android/Google Cases in order of their filing.

18 Case, No. (Judge)	19 Plaintiff / Type	20 Defendants	21 Property, Transaction or Event
22 <i>Feitelson v. Google Inc.</i> , 23 No. 5:14-cv-02007 (Freeman, J.)	24 Gary Feitelson and Daniel McKee / Putative consumer class	25 Google, Inc.* *Converted to Google LLC in 2017	26 Android OS Google Search Google’s MADA Google Play Store
27 <i>Epic Games, Inc. v.</i> 28 <i>Google LLC et al.</i> , No. 3:20-cv-05671	29 Epic Games / Individual app developer	30 Google LLC Google Payment Corp. Google Ireland Ltd.	31 Android OS Google’s MADA Google Play Store

3 Each of the plaintiffs in the recently-filed Android/Google Cases—Epic, Mary Carr, and Pure
 Sweat Basketball—agreed to litigate disputes with Google “exclusively” in Santa Clara County,
 i.e., in the San Jose Division for federal court cases. See Google DDA, §16.8, available at
<https://play.google.com/about/developer-distribution-agreement.html>; Google Terms of Service,
 Section “Settling disputes, governing law, and courts”, available at
<https://policies.google.com/terms?hl=en-US>. Judge Freeman is the only judge currently assigned
 an Android/Google Case (*Carr-Google*) who presides in the San Jose Division.

1	(Donato, J.)	Google Commerce Ltd. Google Asia Pacific Pte. Ltd.	Google's Developer Distribution Agreements ("DDA")
2	<i>Carr v. Google LLC et al.</i> , No. 5:20-cv-05761 (Freeman, J.)	Mary Carr / Putative consumer class	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.
3	<i>Pure Sweat Basketball, Inc. v. Google LLC et al.</i> , No. 3:20-cv-05792 (Chen, J.)	Pure Sweat Basketball / Putative app developer class	Google LLC Google Payment Corp. Google Ireland Ltd. Google Commerce Ltd. Google Asia Pacific Pte. Ltd.

The three recently-filed cases each concern the same open mobile OS (Android) and challenge the same Google Play policies, so there is a potential risk of inefficiencies and conflicting results if those cases are heard before different Judges. The earlier filed case, *Feitelson-Google*, was pending in this district and dismissed by Judge Freeman in 2015. *See Feitelson v. Google, Inc.*, 80 F. Supp. 3d 1019 (N.D. Cal. 2015) (granting motion to dismiss). The same counsel who represented the *Feitelson* plaintiffs also represent the plaintiff in *PSB-Google*, and both complaints allege the same theory of anticompetitive harm: Google's use of MADAs to purportedly foreclose competition in the relevant markets alleged in each complaint. Both complaints allege *inter alia* that under Google's MADA, OEMs can only preload "must-have" Google apps if the OEM agrees to preload a bundle of Google apps (including Google Play), which allegedly forecloses competitive apps from being preloaded. *See, e.g., Feitelson-Google*, Dkt. No. 31, FAC ¶ 7; *PSB-Google*, Dkt. No. 1, Compl. ¶ 7. The *Epic-Google* and *Carr-Google* cases allege substantially similar legal theories. *See, e.g., Epic-Google*, Dkt. No. 1, Compl., ¶¶ 56-57; *Carr-Google*, Dkt. No. 1, ¶¶ 33-34.

* * *

Google therefore respectfully requests that the Court decline to relate *PSB-Google* to *Cameron-Apple* or *Epic-Apple*.⁴

⁴ Google has filed this initial Response in the lowest-numbered case identified on Judge Chen's Sua Sponte Referral Order. Google also intends to file in due course: (1) a response to Judge Chen's Sua Sponte Referral on the docket for *Epic-Google* (before Judge Donato), and (2) an administrative motion as required by Civ. L.R. 3-12(b) to consider whether the Android/Google cases "may be" related to *Feitelson-Google*, which "was pending" before Judge Freeman.

1 Dated: September 3, 2020

2 By /s/ Brian C. Rocca
3 Brian C. Rocca
4 MORGAN, LEWIS & BOCKIUS LLP
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Attorneys for Google LLC

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

GARY FEITELSON, a Kentucky resident, and
DANIEL MCKEE, an Iowa resident, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

GOOGLE INC., a Delaware corporation,

Defendants.

Case No. 5:14-cv-02007-BLF

**[PROPOSED] ORDER RE:
ADMINISTRATIVE MOTION TO
CONSIDER WHETHER CASES
SHOULD BE RELATED**

[PROPOSED] RELATED CASES ORDER

A Motion for Administrative Relief to Consider Whether Cases Should be Related has been filed. The time for filing an opposition or statement of support has passed. As the judge assigned to *Feitelson et al. v. Google Inc.*, No. 5:14-cv-02007-BLF and *Carr v. Google LLC et al.*, No. 20-cv-05761-BLF, I find that the more recently filed case(s) that I have initialed below are related to the cases assigned to me, and such case(s) shall be reassigned to me. Any cases listed below that are not related to the case assigned to me are referred to the judge assigned to the next-earliest filed case for a related case determination.

Case	Title	Related	Not Related
20-cv-05671-JD	<i>Epic Games, Inc. v. Google LLC et al.</i>		
20-cv-05792-JD	<i>Pure Sweat Basketball, Inc. v. Google LLC et. al</i>		

[PROPOSED] ORDER

The parties are instructed that all future filings in any reassigned case are to bear the initials of the newly assigned judge immediately after the case number. Any case management conference in any reassigned case will be rescheduled by the Court. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless otherwise ordered, any dates for hearing noticed motions are vacated and must be renoted by the moving party before the newly assigned judge; any deadlines set by the ADR Local Rules remain in effect; and any deadlines established in a case management order continue to govern, except dates for appearance in court, which will be rescheduled by the newly assigned judge.

DATED:

Hon. Beth Labson Freeman
United States District Judge